

## AGENDA

Notice is hereby given of a meeting of the Board of Commissioners of Burkburnett to be held on **Monday, May 19, 2014 at 7:00 p.m.** at City Hall-Council Chambers, 501 Sheppard Road, Burkburnett, Texas for the purpose of considering the following agenda items. The Board of Commissioners may discuss and take action on any item on this agenda. The Board of Commissioners reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public may speak on items listed on the posted agenda. All persons desiring to address a specific agenda item must submit an "Appearance before the City Commissioners" form prior to the reading of the item to the City Clerk, Janelle Dolan. The Mayor will allow comments before each agenda item for which they have requested to be heard. Comments will be limited to three (3) minutes with a maximum two (2) minute extension following approval by a majority of the members of the Board of Commissioners.

**Item 1.** Mayor: Call meeting to order.

**Item 2.** Invocation- Bud Branson, Minister of Central Church of Christ.

**Item 3.** Pledge of Allegiance.

**Item 4. CONSENT AGENDA:**

**A.** Approval of Minutes from April 21, 2014 and April 28, 2014 Special Called Meeting

**Item 5.** Discuss and take any action necessary on variance request for water well location.

**Item 6.** Discuss and take any action necessary on crosswalks located on Davey Drive.

**Item 7.** Discuss and take any action necessary on ballot language for Charter Amendment.

**Item 8.** Discuss and take any action necessary on language for Stage 5 Water Restrictions.

**Item 9.** Ordinance Number 854. An ordinance amending Appendix J of the Water Conservation Plan; establishing criteria for the drought contingency plan; providing penalties, severability and an effective date.

**Item 10.** Discuss and take any action necessary on language for water vending machine.

**Item 11.** Ordinance Number 855. An ordinance amending Chapter 53, Water Vending Machine, in the Code of Ordinances.

**Item 12.** Discuss and take any action necessary on Interlocal agreement between the City of Burkburnett and Wichita County for certification of Wichita County residency.

**Item 13.** Discuss and take any action necessary on Farm Lease Agreement with Fred Dwyer.

**Item 14.** Discuss and take any action necessary on animal adoption program.

**Item 15.** Resolution Number 559. A resolution authorizing the Burkburnett Development Corporation to fund up to \$55,000 for the purchase and installation of an electric message center for the Burkburnett Community Center, Final Reading.

**Item 16.** Resolution Number 563. A resolution denying rate increase under Atmos Second Annual RRM Rate Increase under the Renewed RRM Tariff.

**Item 17.** Review of monthly reports.

- A. Administration
- B. Public Works
- C. Public Safety
- D. Economic Development

**Item 18.** Public Comments.

The Board of Commissioners invites citizens to speak on any topic.

Please fill out an "Appearance before City Commissioners" form in order to address the Commissioners and turn the form in prior to 7:00 p.m. to City Clerk, Janelle Dolan.

Public Comments are limited to five minutes. Time limits can be adjusted by the Mayor as to accommodate more or fewer speakers.

**Unless the item is specifically noted on this agenda, the Board of Commissioners is required under the Texas Open Meetings Act to limit its response to one of the following:**

**\*Responding with a statement of specific factual information or reciting the City's existing policy on that issue.\***

**Item 19.** City Manager's report.

- A. Kiosk Update
- B. Water Vending Machine Update
- C. Events

**Item 20.** Commissioner's Comments.

**Pursuant to Government Code Section 551.0415, City Commissioner Members may make a report about items of Community interest during a meeting of the governing body without having given notice of the report. Items of community interest include:**

**\*Expressions of thanks, congratulations, or condolence;**

**\*Information regarding holiday schedules;**

**\*An honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of the person's public office of public employment is not an honorary or salutary recognition for purposes of this subdivision;**

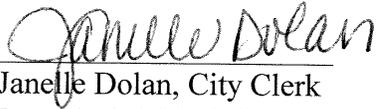
**\*A reminder about an upcoming event organized or sponsored by the governing body;**

**\*Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and**

**\*Announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.**

**Item 21.** Adjournment.

I, Janelle Dolan, City Clerk for the City of Burkburnett, Texas do hereby certify that I posted this agenda on the glass front door of the City Hall, facing the outside at 3:30 p.m. on May 16, 2014 in compliance with the Open Meeting Act Chapter 551.



Janelle Dolan, City Clerk

Posted 5/16/2014 @

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 72 hours prior to this meeting. Please contact the City Clerk's office at (940) 569-2263 for further information.

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a regular meeting on Monday, April 21, 2014 at 7:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro Tem
Josh Andrajack	Commissioner
Randy Brewster	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Michael Tugman	Commissioner

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; Ed Stahr, Police Chief; and Deana Sheriff, Economic Development Director.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Duane Perkinson, Pastor of Central Baptist Church.

Item 3. The Pledge of Allegiance was led by Commissioner Tugman.

Item 4. Consent Agenda.

A. Approval of Minutes from March 17, 2014 and March 27, 2014 Special Called Meeting

Motion was made by Commissioner Tugman, seconded by Commissioner Hardy to approve Consent Agenda 4. Motion carried unanimously.

Item 5. Mike Whaley, City Manager, addressed the Mayor and Commissioners and reported Dan Fears currently serves on the Wichita-Wilbarger 9-1-1 District Board of Managers and represents municipalities. Mr. Fears has indicated he does not wish to be reappointed when his term expires on May 15, 2014. Mr.

Whaley stated Dana Ross, owner of Farmers Insurance Agency in Iowa Park, has expressed her willingness to fill the board position being vacated by Mr. Fears.

Motion was made by Commissioner Love, seconded by Commissioner Andrajack to recommend Dana Ross to the Wichita-Wilbarger 9-1-1 District Board of Managers. Motion carried unanimously.

Item 6. Resolution Number 559 was presented in its entirety. A resolution authorizing the Burkburnett Development Corporation to fund up to \$55,000 for the purchase and installation of an electric message center for the Burkburnett Community Center. First reading, no action taken.

Item 7. Resolution Number 560 was presented in its entirety. A resolution adopting an internal grievance procedure for complaints having to do with the Texas Community Development Block Grant (TxCDBG). Gordon Smith, Director of Public Works, addressed the Mayor and Commissioners and stated the City was awarded a TxCDBG in the amount of \$275,000 from the Texas Department of Agriculture (TDA). Mr. Gordon stated Resolution Number 560 is a new CDBG requirement by TDA and it is an agreement between the City and TDA indicating the City will manage any citizen's grievance/complaint regarding the City's participation in a CDBG application and/or grant activity.

Motion was made by Commissioner Andrajack, seconded by Commissioner Lindenborn to approve Resolution Number 560 as presented. Motion carried unanimously.

Item 8. Mr. Smith addressed the Mayor and Commissioners and reported the Parks and Recreation Board met on April 9, 2014 and reviewed the volunteer application received from Brian Love. A vacancy on the Parks and Recreation Board was created by the resignation of Don Hardy. The Parks and Recreation Board voted unanimously to recommend Mr. Love to the Board of Commissioners for appointment to the Parks and Recreation Board.

Motion was made by Commissioner Tugman, seconded by Commissioner Andrajack to approve the appointment of Brian Love to the Parks and Recreation Board.

Ayes: Mayor Law, Commissioners: Lindenborn, Andrajack, Brewster, Hardy, and Tugman

Abstained: Commissioner Love

Motion carried.

Item 9. Mr. Smith addressed the Mayor and Commissioners and reported the terms of four Cemetery Board members expired in December 2013. The members with expired terms are: Denise Kirkpatrick, Ron Clarke, Nova Dickson, and

Shannon Waitman. Mr. Smith stated the Cemetery Board met on April 14, 2014 and Denise Kirkpatrick, Ron Clarke, and Nova Dickson indicated they are willing to serve again on the Cemetery Board. Shannon Waitman turned in her resignation from the Board at that meeting.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to approve the re-appointments of Denise Kirkpatrick, Ron Clarke, and Nova Dickson to the Cemetery Board. Motion carried unanimously.

Item 10. Review of monthly reports.

- A. Administration-None.
- B. Public Works- Mr. Smith reported he is glad to be in Burkburnett. He has hit the ground running.
- C. Public Safety- Ed Stahr, Chief of Police, reported the Police Department has applied and been approved for a Criminal Justice Grant of \$21,000 for equipment upgrades.
- D. Economic Development-Deana Sheriff, Economic Development Director, reported she is working with four active prospects. Ms. Sheriff reported will be attending the Wind and Air Show next week.

Item 11. Public comments.

Item 12. City Manager's report.

Item 13. Commission comments.

Item 14. Motion was made by Commissioner Tugman, seconded by Commissioner Lindenborn to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk

**MINUTES**  
**BOARD OF COMMISSIONERS**

The Board of Commissioners of the City of Burkburnett, Texas met in a special called meeting on April 28, 2014 at 6:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meeting Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Josh Andrajack	Commissioner
Randy Brewster	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner

Commissioner Tugman was not present.

Others present: Mike Whaley, City Manager and Janelle Dolan, City Clerk.

Item 1. Mayor Law called the meeting to order.

Item 2. Invocation was given by Commissioner Andrajack.

Item 3. The pledge was led by Commissioner Love.

Item 4. Mike Whaley, City Manager, addressed the Mayor and Commissioners and stated the City received a request from the Red River Riding Club to sublet the rodeo grounds to Carson and Barnes Circus. Mr. Whaley stated per the lease agreement with the Red River Riding Club they must first get approval from the City. Mr. Whaley stated the City received a certificate of insurance from Carson and Barnes Circus.

Motion was made by Commissioner Brewster, seconded by Commissioner Hardy to approve the request from Red River Riding Club to sublet rodeo grounds to the Carson and Barnes Circus. Motion carried unanimously.

Item 5. City Manager Comments.

Item 6. Council comments.

Item 7. Motion was made by Commissioner Hardy, seconded by Commissioner Lindenborn to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Variance Request for front yard water well

### Background

A variance request has been submitted by Mr. Adams who resided at 1013 Preston Rd requesting the Board of Commissioners allow him to drill a private water well in the front yard of his property. Ordinance 612 pertaining to drilling of private water wells restricts the well to the rear yard and does not allow for drilling in the front or side yard. It does however in Section 12 of the ordinance allow for a variance request to be made under cases of emergency or hardship. Another issue at play deals with a state requirement that a well cannot be drilled within 50 feet of a sealed sanitary sewer without seeking a variance from the TDLR (Texas Department of Licensing and Regulation). The TDLR rule prevent Mr. Adams from drilling in the back yard due to the proximity of the sanitary sewer in the alley. We have spoken with TDLR for Mr. Adams and they have agreed to issue a variance (\$100.00 Fee) but would require an additional casing and concrete barrier to the well to be constructed to protect the well form contamination. Mr. Adams has chosen not to seek a variance from the TDLR, but instead to seek a variance from the City under hardship of the Drought Restrictions.

### Fiscal Impact

N/A

### Options

- Approve Variance
- Deny variance and suggest Mr. Adams seek a variance from the TDLR

### Staff Recommendation

Staff has no specific recommendation

### Attachments

Copy of Ordinance 612  
Mr. Adam's request and drawing

## ORDINANCE NUMBER 612

**AN ORDINANCE REGULATING THE DRILLING AND OPERATION OF WATER WELLS FOR NON-MUNICIPAL USES IN THE CITY OF BURKBURNETT, TEXAS; REQUIRING APPLICATION AND ISSUANCE OF A PERMIT FOR THE DRILLING AND OPERATION OF ANY SUCH WELL; DECLARING IT A MISDEMEANOR TO DRILL OR OPERATE ANY SUCH WELL IN VIOLATION OF THE PROVISIONS OF THE ORDINANCE; CONTAINING A PENALTY CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:**

**SECTION 1.** It shall be unlawful/any person, firm or corporation to drill or operate any water well within the corporate limits of the City of Burkburnett, Texas, without first obtaining a permit therefore from the City of Burkburnett, and without complying with the terms and provisions of this ordinance.

**SECTION 2.** Application for the drilling and/or operation of a water well shall conform to the following requirements and give the following information:

- (a) It shall be in writing and signed by the owner of the premises where the well is located or to be located.
- (b) It shall give the street address and legal description of the property where the well is located or to be located.
- (c) It shall be accompanied by detailed drawings and specifications showing the exact location of the well on the premises, the depth and diameter of the well hole, type and size of the casing and pumping facilities to be used, maximum capacity per minute of the pumping facilities, and location of all piping and outlets on the premises to be served by the well.
- (d) It shall be accompanied by a fee of \$ 25.00 to defray the city's cost in investigating the application and issuing the permit. This fee will not be refundable whether the permit is granted or denied.

**SECTION 3.** All water wells for non- municipal use in the City of Burkburnett, Texas, shall be drilled and operated in conformity with the following regulations:

- (a) The well hole shall not have a maximum depth in excess of 200 feet from the ground surface.
- (b) The well borehole shall not have a maximum diameter in excess of six inches.
- (c) No windmill shall be erected or used as a means of pumping water from the well.
- (d) The well shall be located only in the backyard of the premises, and no well shall be permissible in the front or side yards of any premises within the City.
- (e) The pumping device used to raise water from the well shall not have a maximum height of more than seven feet above ground level, and shall not have a maximum pumping capacity in excess of 30 gallons per minute.
- (f) The well opening, pumping facilities and storage tanks shall be housed in a manner to comply with all applicable Burkburnett City Codes.
- (g) The pumping and electrical connections to the well shall be in conformity with all requirements of the Burkburnett Building Codes.
- (h) The well, pumping facilities and water systems connected thereto shall be subject to inspection by the City of Burkburnett.
- (i) No such well shall ever be connected to the Burkburnett Municipal Water System.

(j) Water from such well shall be used only for non-domestic purposes. Non-domestic purposes, as used in this ordinance, shall mean for purposes other than for human consumption and/or connection to plumbing facilities used within residential and public buildings of all kinds for preparation of food for human consumption and/or washing of utensils used in cooking or serving food for human consumption and clothing for human wear and/or disposal of waste into the Burkburnett Municipal Sewer System.

(k) Water from such well shall be used only for the non-domestic uses of the owner of the premises where the well is located, and no water from such well shall be given away or sold to other persons, firms or corporations.

(l) If the City, after investigation, determines that water from such well is being discharged in any manner, by drainage or seepage or otherwise, into the Burkburnett Municipal Sewer System, an additional sewer charge will be made to such premises to reasonably compensate the City for handling such discharge.

(m) Such well shall be drilled and operated in conformity with all Municipal, County and State health and safety laws, rules and regulations, which compliance shall be the responsibility of the owner or owners of the premises where the well is located.

(n) Water faucets connected with such well, whether located at the wellhead or otherwise, shall be enclosed and locked when not in use, so as to prevent access thereby by children or any person who is not authorized by the owner to use water from the well in conformity with this ordinance.

(o) During any time of rationing of water usage from the Burkburnett Municipal Water System, the premises where any such well is located shall have a legible sign placed in the front yard of the premises to inform both the public and municipal officials that a private well is in operation on said premises.

**SECTION 4.** Applications for permits under this ordinance shall be made to the City of Burkburnett Community Planning Department, and in addition to other information herein required, shall state in detail the specific use intended to be made of water from the well for which the permit is requested. If the application is found to be in order and in compliance with all of the regulations contained in this ordinance, as well as State, County and other Municipal laws, rules and regulations, then the permit will be issued; otherwise it will be denied. Denial of a permit may be appealed to the Burkburnett Board of Commissioners by giving notice in writing to the City Secretary of intent to appeal within 15 days after notice of such denial.

**SECTION 5.** Any permit issued under this ordinance shall be for the sole benefit of the owner or owners, and their tenants, of the property where located. In event of a subsequent change of ownership of the subject property, then the new owners must submit a new application to the City of Burkburnett for a permit for continued use of the existing well.

**SECTION 6.** Premises where any private well, as contemplated by this ordinance, is located, shall be subject to inspection at any time, without notice, by municipal officials, to determine whether it is being drilled and/or operated in conformity with the provisions of the ordinance, and whether water from such well is being discharged into Burkburnett Municipal Sewer System or connected in any way to the Burkburnett Municipal Water System.

**SECTION 7.** Wells for non-municipal use within the City of Burkburnett in existence at the effective date of this ordinance shall be exempt from the limitations set forth in the ordinance with respect to depth and diameter of the well hole, size and type of pumping facilities and location on the premises, if they are not then in conformity with such regulations. The exemption shall continue only during the continuing life and use of the well, however, and shall terminate upon the abandonment the well. Existing wells, however, shall be subject to all other regulations of this ordinance relating to their continued operation, including the requirement of a permit for such continued operation;

provided, however the owner or owners of premises where such existing wells are located shall have a period of three months in which to obtain a permit. No permit fee will be charged for the initial permit for continued operation of an existing well.

**SECTION 8.** Upon abandonment of any non-municipal well in the City of Burkburnett, the owner or owners of the premises where located shall disconnect all plumbing lines and connections from said well and shall plug the hole, with cement or other means, sufficient to prevent any person from stepping into or falling in the well hole or raising water from the abandoned well.

**SECTION 9.** Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed \$200.00. Each day that a violation of this ordinance occurs by continued drilling or operation of a well in violation of the provisions of the ordinance shall be deemed to constitute a distinct and separate offense.

**SECTION 10.** This ordinance shall in no manner prejudice the lawful rights of the City of Burkburnett, or any other individual or entity, to seek recourse in any court of competent jurisdiction neither to recover damages for the unlawful or negligent drilling or operation of any well, nor to enjoin the drilling or operation of any well deemed to constitute a nuisance.

**SECTION 11.** Each and every section, sentence, paragraph, phrase and provision of this ordinance is declared to be a separate and distinct part hereof, which the Burkburnett would have enacted alone, and the holding of any part of this ordinance invalid for any reason shall not affect the validity of any other part hereof.

**SECTION 12.** If water from the Burkburnett Municipal Water System is not available to particular premises within the City, or for any other reason of an emergency or hardship nature under particular circumstances deemed adequate after hearing, any provisions of this ordinance should equitably be waived, then the Board of Commissioners may grant variances from the particular provisions of the ordinance as to particular premises, either temporary or permanent, in order to alleviate such hardship, emergency or inequity. Application for such variance shall be made in writing, and unless made a part of an original application hereunder, shall be accompanied by the same fee as for drilling or operation of a well. The Board of Commissioners may, at its election, refer such application to city staff for study and recommendation.

**SECTION 13.** The matters addressed in this ordinance are necessary for the immediate preservation of public health and safety of the citizens of the City of Burkburnett, Texas. Accordingly, the Board of Commissioners declares this matter to be an emergency thereby waiving the requirement that this ordinance be read and voted upon on three separate meetings and this ordinance shall, therefore, take effect upon the passage of this ordinance by the Board of Commissioners of the City of Burkburnett, Texas and the publication of its provisions as required by applicable law.

**PASSED AND APPROVED** on this 19<sup>th</sup> day of February 2001.

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Bill Vincent, Mayor

**ATTEST:**

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Trish Holley, City Secretary

## Janelle Dolan

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**From:** Mike Whaley <mwhaley@burkburnett.org>  
**Sent:** Thursday, May 15, 2014 3:20 PM  
**To:** Janelle Dolan  
**Subject:** FW: Written Request for Variance  
**Attachments:** Charles Adams Official Request IAW 53.47.docx

**From:** charles [mailto:chuckadams@myway.com]  
**Sent:** Thursday, May 15, 2014 9:38 AM  
**To:** Carl Law; mwhaley@burkburnett.org  
**Subject:** Written Request for Variance

Charles Adams  
1013 South Preston Road  
Burkburnett TX, 76354  
(580) 649-9489

Mike Whaley  
City Manager, Burkburnett  
501 Sheppard Road  
Burkburnett TX, 76354

Dear Mr. Whaley,

In accordance with City Ordinance 53.47, I formally request in writing, a variance to City Ordinance 53.42 (D) banning water wells in the front or side yard. In order to comply with the Texas Administrative Rules 16 TAC Chapter 76.100 requiring a minimum of 50 feet away from water-tight sewage the only location on my property is the front yard (see attached).

The covered well head is approximately 12 inches high and 12 inches in diameter. The well head is concealed by a fake rock, similar to the one used on the North side of the Burkburnett Post Office at the intersection of County Road and West Williams Drive.

According to City Ordinance 53.52 (B) the City Manager or authorized designee can authorize a variance request. In order to minimize the damage due to drought i.e. progressive deterioration, foundational cracks, soil erosion and loss of mature trees, I implore you to approve my request for a variance.

Sincerely, Charles Adams

SOUTH PRESTON ROAD

Property Line

Property Line

Drive Way

WELL HEAD  
6.5 Feet from  
Property Line  
(must be 5 Feet  
away)

TOILETS

56 FEET

Existing Property

Addition 2009

Sun Room  
Addition 2012

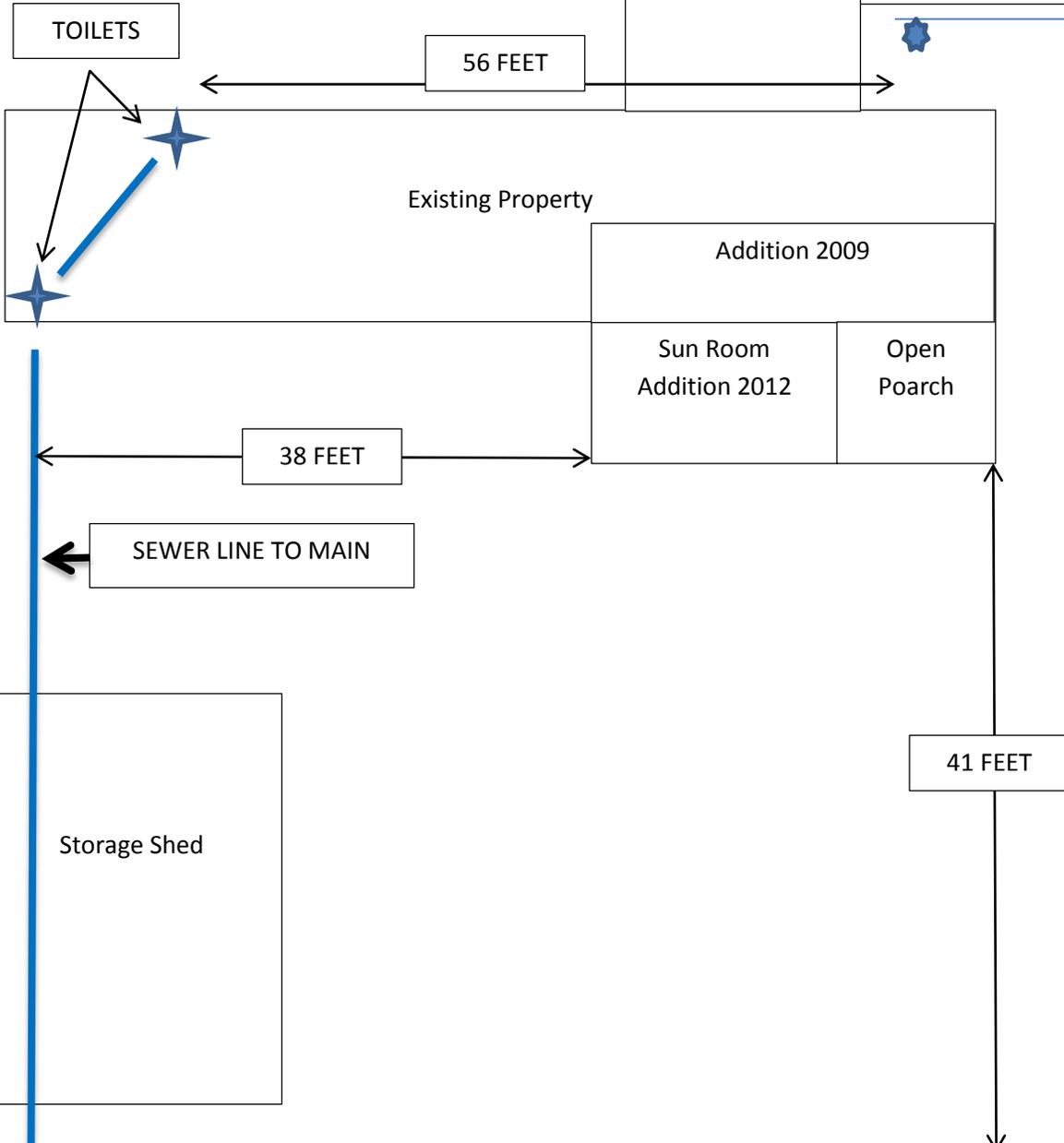
Open  
Poarch

38 FEET

SEWER LINE TO MAIN

41 FEET

Storage Shed





## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Review options for crosswalks on Davey Drive

### Background

Attached

### Fiscal Impact

Pending estimates

### Options

Our options are pending upon Council opinion

### Staff Recommendation

Staff has no specific recommendation

### Attachments



## City Commission Agenda Memo

**From:** Mike Whaley

**Date:** May 19, 2014

**Item:** Review options for crosswalks on Davey Drive

### **Background:**

I believe some historical information needs to be shared in discussing the crosswalk concern. On May 13, 2006 the citizens of Burkburnett voted for and passed a general obligation bond for \$6,775,000 which included 3 propositions. These projects included Bishop Road, East Sycamore Drive, South Preston Road, Kramer Road, Cropper Road, College Drive, County Road, Williams Drive, North Preston Road, North Bishop Road and Davey Drive.

The proposition was broad in terms to allow for any potential construction improvements determined by staff for each project. Partly due to the fact that conditions may change from conception of bond project to completion of bond project. These improvements included street reconstruction, curb & guttering, drainage improvements, sidewalks, and signage, but were not limited to these items only.

North Bishop and Davey Drive were the final projects in the bond which brings us to current history regarding the crosswalks. In preparing for discussion with staff and our engineering contractor, I spent some time studying the reconstruction project for both North Bishop and Davey Drive. One of the items I learned was that both the Girls' Softball League and the Little League Baseball had over 300 plus kids in participation, as well as any family and friends in attendance to watch the games. Also, all of the practices for Top of Texas Football were being held at both the baseball and softball complexes. Therefore, one of my concerns for Davey Drive was to address the current conditions in place for "Safe" pedestrian foot traffic.

What I determined was that out of the two existing crosswalks, only the one closest to Fire Station 3 was being utilized. The other connecting the softball complex with the baseball complex was poorly marked and located as to lead the pedestrian in the direct vehicular traffic flow of an approach for the baseball complex. Secondly, while watching the flow of traffic along Davey Drive, it was apparent that a majority of motorist were driving above the speed limit of 30 mph and were not slowing the rate of speed as they approached the crosswalk. It was my conclusion

that Davey Dr. needed an increased number of crosswalks to handle the amount of foot traffic observed at various locations, as well as the need to create a crosswalk that had higher visibility. I took my concerns to the City Manager and he agreed with me that the crosswalks needed to be addressed in the scope of work on Davey Drive. The City Manager discussed the issue with our engineering consultant and determined that an elevated feature would resolve the issue. This is an engineering technique that is commonly used due to the fact that an elevated feature instinctively causes a motorist to lower their rate of speed. Our engineering consultant took the City staff's counsel and designed incorporated it into the design of the crosswalks.

Some concern has been raised as to the Council's approval of the crosswalk design. Historically, I can say that Council has never approved construction design and specifications on any construction projects. The conceptual plan (for projects such as the Aquatic Center or Cemetery Pavilion) or the overall Scope of Work (such as selecting which streets to include in the bond) were made by Council. In general, it is the staff's responsibility to implement construction design and specifications with the assistance of consultation from engineering or architectural firms.

#### Additional information:

- Improvements to design have been discussed such as:
  - Led Signs
  - Reflective Painting/Larger Reflectors
  - Xeriscape Landscaping
  - Lowering Speed Limit to 25mph (ordinance)
- Installation of crosswalks: December 2013
- One reported accident involving crosswalk

# Traffic Safety Corp.

2708 47th Avenue  
Sacramento, CA 95822

# Quotation

Telephone (916) 394-9884

Fax # (916) 394-2809

[www.xwalk.com](http://www.xwalk.com)

**Customer ID.: QUOTETX**

**Quotation No.: 4104**

Quote To: **Wichita Falls**

Devin Smith  
devins@wf.net  
(940)723-1455

Ship To:

Date	Ship Via	F.O.B.	Payment Terms	
05/14/14	Best Way	Origin	Net 30	
Sales Person				
Alexa Avram				
Quantity	Item Number	Description	Unit Price(USD)	Amount
Required	B.O.			

8	SI-TS40W11230SA	Solar LED Flashing Sign FYG Pedestrian Crossing, FYG DG3 Diamond Shape, Solar 24 hour	1420.00	11360.00
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\* PRICE FOR THIS QUOTE AND  
QUANTITY ONLY \*

Quote subtotal 11360.00

Quote total 11360.00

Shipping & Handling included in Price

Note: Traffic Safety Corp is not a provider of engineering design services. All installation descriptions and examples are for illustrative purposes and do not take into account the conditions present at any specific site location.

Traffic Safety recommends that plans for fixture drainage, pole foundations, and pole selection be reviewed and approved by an engineer, prior to purchase and installation of the system.

QUOTATION EXPIRES 06/13/14

Documentation supporting our Veteran owned status is attached.

Thank you for considering us!!

Traffic Safety, Inc. Terms and Conditions apply.

1. Our veteran owned status is supported by owner Kyle Owens' Honorable Discharge set forth below.





Traffic Safety Corporation  
2708 47th Ave.  
Sacramento, CA 95822-3806  
Toll Free: 888.446.9255  
Tel: 916.394.9884  
Fax: 916.394.2809  
Email: sales@xwalk.com  
Web: www.xwalk.com

**TS40**  
**Pedestrian and School Crossing**  
**Flashing LED Edge Lit Signs**  
**MUTCD Compliant**

### General Description

The TS40 conforms to the specifications of the Federal Highway Administration (FHWA) set forth in the Manual on Uniform Traffic Control Devices (MUTCD). Using the latest advances in LED technology, the TS40 employs a set of synchronized high-intensity LEDs to extend the range of visibility of the sign during the day or night. Furthermore, the LEDs are flashed, which increases driver awareness of the sign and allows drivers to act sooner in advance of the crosswalk. Typical applications include: mid-block crosswalks, school zones, parks, playgrounds, shopping malls and hospitals.

### Why Our Signs are Better

#### High Visibility

- 3M™ Diamond Grade™ reflective sheeting provides outstanding reflective brightness, day or night.
- High intensity LEDs extend the visibility of the sign under all weather conditions.

#### Superior Performance

- Low power LED technology reduces system power consumption and operating cost.

#### Outstanding Durability

- Highway grade .080 aluminum construction provides resistance to corrosion.
- The use of highway grade Diamond Grade™ sheeting helps to maintain long term reflectivity.
- Stainless steel security fasteners and Tuff-nut mounting hardware included to keep the sign secure.
- Signs are weatherproof to prevent outside elements from entering the internal casing.

#### Features

- MUTCD section 2A.08 compliant.
- High visibility, low power consumption.
- Fast, easy installation, low maintenance.
- Vandal-resistant mounting hardware included.
- Optional battery backup, not affected by local grid power outages, 12 day autonomy (flashing 24/7).



*Pedestrian Crossing (W11-2)*



*.080 aluminum construction*



*School Crossing (S1-1)*

### Solar TS40

A solar powered TS40 is available that features off-grid power generation and independent flashing control.

#### Features

- Solar powered with battery backup, no AC power required.
- MUTCD Section 2A.08 Compliant.
- Installs easily onto any new or existing sign post.
- High intensity LEDs flash in unison, once per second, commanding the attention of drivers day and night.
- Activation options: Continuous 24/7 Flashing, Programmable Timer, or Wireless Push-button.



**Visit our web site: [www.xwalk.com](http://www.xwalk.com)**



**Traffic Safety Corporation**  
 2708 47th Ave.  
 Sacramento, CA 95822-3806  
 Toll Free: 888.446.9255  
 Tel: 916.394.9884  
 Fax: 916.394.2809  
 Email: sales@xwalk.com  
 Web: www.xwalk.com

**TS40**  
**Pedestrian and School Crossing**  
**Flashing LED Edge Lit Signs**  
**MUTCD Compliant**

**TS40 Specifications**

**Compliance**

- MUTCD section 2A.08 compliant

**Construction**

- .080 highway grade aluminum and stainless fasteners
- Tuff-nut security mounting hardware (pole not included)

**LED Lighting**

- White LEDs standard, Yellow LEDs optional
- LED 3/4" bullet style in sign perimeter border
- Flash rate 50 to 60 times per minute
- LED life expectancy over 100,000 hours
- Visible up to 2 miles away
- Field replaceable grommet mounted lights
- Sealed DOT approved lighting

**Circuitry Technology**

- Sealed PCB technology
- 24 hour operation / dusk to dawn operation

**Solar / AC / Battery Specifications**

- 20-30W solar cell; 20W: 22"x13.75"x1", 4.5" depth with bracket
- AC - 120 volt battery maintainer
- DC - 12 volt 22AH SLA battery (3 to 5 year battery life)
- Up to 12 days in 24/7 operation

**Options**

- Battery backup for AC signs
- Additional LED lights
- 7 day or 365 day programmable timers
- Wireless activation, keyfob remote control transmitter
- Wired or wireless push-button activation
- Keyed on/off switch
- Anti-graffiti protective overlay

**Warranty**

- 10 year solar panel
- 5 year sign construction
- 2 year electrical circuits
- 2 year battery (full)

**Reflective Sheeting**

 3M™ Diamond Grade™ DG<sup>3</sup> Fluorescent Yellow Green  
 (Standard for Pedestrian and School Crossing signs)

 3M™ Diamond Grade™ DG<sup>3</sup>  
 (Optional for non-school zone areas)

 3M™ High Intensity Prismatic (HIP)  
 (Optional for non-school zone areas)

**Optional Keyfob Remote Control Transmitter**

A keyfob remote can be added to the TS40 to allow for wireless activation and deactivation of the sign. This is ideal for applications where temporary sign activation is required.

For example, crossing guards would have the ability to turn on the flashing lights when children enter the crosswalk and then stop the lights when the children clear the crosswalk.

The keyfob would also allow firefighters to activate "fire station ahead" signs when exiting their station and merging with traffic. After the keyfob is used to activate the lights, the lights will flash for 90 seconds, or until deactivated with the keyfob. The keyfob has a range of 500 feet.



**Optional Push-Button Activation**

Provides a simple and convenient way for pedestrians to activate the sign's LED warning lights. This increases the effectiveness of the warning lights since they are only activated when a pedestrian is present. Drivers learn to associate the flashing lights with a need to yield or slow down for pedestrians.



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**TS40**  
**Pedestrian and School Crossing**  
**Flashing LED Edge Lit Signs**  
**MUTCD Compliant**

**Ordering Codes**

Product Code	Sign Type and Size	Sign Faces	Power <sup>3</sup>	Activation Options (select only one)	Reflective Sheeting
SI-TS40 <sup>1,6</sup>	<b>W11-2-24:</b> 24" x 24" Pedestrian Crossing <b>W11-2-30:</b> 30" x 30" Pedestrian Crossing <b>W11-2-36:</b> 36" x 36" Pedestrian Crossing <b>W11-2-48:</b> 48" x 48" Pedestrian Crossing <b>S1-1-30:</b> 30" x 30" School Crossing <b>S1-1-36:</b> 36" x 36" School Crossing	<b>D:</b> Double Sided <sup>2</sup>	<b>AC:</b> AC <b>B:</b> Battery <sup>4</sup> <b>S:</b> Solar	<b>1:</b> Wireless Sign & Wired Push-button Activation <b>2:</b> Programmable 7 Day Timer <b>3:</b> Photocell <b>4:</b> Keyfob Remote Control Transmitter <b>5:</b> SmartWalk XP Pedestrian Microwave Presence Sensor (single sign) <sup>7</sup> <b>6:</b> Programmable 365 Day Timer <b>7:</b> Wireless Sign with Wired SmartWalk XP Pedestrian Microwave Presence Sensor (for curbside pedestrian presence detection) <sup>7</sup> <b>9:</b> Wireless Sign & Wireless Push-button Activation	<b>A:</b> Diamond Grade DG3 Fluorescent Yellow Green <sup>5</sup> <b>B:</b> Diamond Grade DG3 <b>C:</b> High Intensity Prismatic (HIP) <b>I:</b> Anti-graffiti Protective Overlay

1. SI-TS40 is used in standalone applications, without a system controller.
2. Single sided signs standard.
3. 24/7 operation standard.
4. Includes spare battery and charger.

5. Fluorescent Yellow Green (FYG) sheeting should be used in school zone areas.
6. Pole not included, sold separately.
7. Also available with SmartWalk TX Pedestrian Microwave Motion Sensor for trail occupancy detection.

**Visit our web site: [www.xwalk.com](http://www.xwalk.com)**





## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Review Charter Ballot Language

### Background

Attorney Mike Guevara will be presenting what should be the final ballot language for discussion and review. If there are any concerns from council or suggested revisions, this can be done at this time. Mike will be in attendance.

### Fiscal Impact

N/A

### Options

- Approve Charter Ballot Language as presented
- Approve Charter Ballot Language with revisions

### Staff Recommendation

Staff has no specific recommendations

### Attachments

Copy of Proposed Charter Ballot Language

**AN ORDINANCE ORDERING AND PROVIDING NOTICE OF A SPECIAL HOME-RULE ELECTION IN THE CITY OF BURKBURNETT, TEXAS, TO BE HELD ON NOVEMBER 4, 2014 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS, FOR ADOPTION OR REJECTION, PROPOSED AMENDMENTS TO THE EXISTING CHARTER OF THE CITY OF BURKBURNETT, TEXAS, AS AMENDED; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Burkburnett, Texas, in the exercise of the discretion reposed in it by the Constitution and laws of this State, and in accordance with the provisions of Chapter 9 of the Texas Local Government Code, has determined to submit the following proposed amendments of the existing Charter of the City of Burkburnett at a special election to be held concurrently with the general election to be held November 4, 2014;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURKBURNETT, TEXAS:**

**Section 1  
ELECTION ORDER AND NOTICE OF ELECTION**

There is hereby ordered a Special Election to be participated in by the qualified voters of the City of Burkburnett, Texas, to be held on the 1<sup>st</sup> Tuesday in November, being the 4<sup>th</sup> day of November, 2014, between the hours of \_\_\_\_\_ and \_\_\_\_\_, for the purpose of submitting to the qualified voters of the City, for adoption or rejection, the following proposed amendments to the existing Charter of the City of Burkburnett, Texas.

**Section 2  
PROPOSED AMENDMENTS**

**I.**

Amending Article III, Section 4 of the City Charter to correct a typographical error changing the word “choses” to “choices” so that the language shall read as follows:

“All real estate owned in fee simple title, or held by lease, sufferance, easement or otherwise; all public buildings, fire stations, parks, streets and alleys, and all property, whether real or personal, of whatever kind, character or description now owned or controlled by the City of Burkburnett, shall vest in, inure to, remain and be the property of said City of Burkburnett under this Charter; and all causes of action, choices in action, rights or privileges of every kind and character and all property of whatsoever character or description which may have been held, and is now held, controlled or used by said City of Burkburnett for public uses or in trust

for the public, shall vest in and remain and inure to the City of Burkburnett under this Charter, and all suits and pending actions to which the City of Burkburnett heretofore was or now is a party, plaintiff or defendant, shall in no wise be affected or terminated by the adoption of this Charter, but shall be continued unabated.

## **II.**

Amending Article III, Section 10 of the City Charter clarifying the eminent domain authority for the City by authorizing the use of eminent domain authority as provided by the Constitution and laws of the State. The current language lists multiple areas of eminent domain authority. The new language will authorize the City to use the eminent domain authority provided by the Constitution and laws of the state of Texas so that the language will read as follows:

“The City shall have the full power and right to exercise the power of eminent domain where necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. The City may exercise the power of eminent domain in any manner authorized or permitted by the Constitution and laws of the State. The power of eminent domain hereby conferred shall include the right of the City to take the fee in land so condemned and such power and authority shall include the right to condemn public property for such purposes. The City shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this Charter.”

## **III.**

Amending Article III, Section 18 of the City Charter to correct a typographical error changing the word “damand” to “demand” so that the language shall read as follows:

“The City of Burkburnett shall have the power to buy, own, construct and to maintain and operate, within or without the city limits, a system or systems, of gas, or electric lighting plants, power plants, telephones, street railways, fertilizing plants, abattoirs, municipal railway terminals, loading and unloading devices, and shipping facilities, or any other public services or public utilities and to demand and receive compensation for services furnished for private purposes or otherwise, and to exercise the right to eminent domain for the appropriations of lands, rights-of-way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. And said City of Burkburnett shall have the power to acquire by lease, purchase or condemnation, the property or any part thereof of any person, firm or corporation now or hereafter conducting any such business, for the purpose of operating such public utility or utilities and for the purpose of distributing such service throughout the city or any part thereof, and the governing body of said city shall pass all ordinances or resolutions necessary or proper to give full force and effect to the provisions contained in this section.”

## **IV.**

Repealing Article III, Section 30 of the City Charter designating the fire limits within.

**V.**

Repealing Article III, Section 31 of the City Charter designating the materials the must be used for construction within the fire limits.

**VI.**

Repealing Article III, Section 32 of the City Charter authorizing the Board of Commissioners to extend the boundary of the fire limits.

**VII.**

Amending Article III, Section 34 of the City Charter by removing the requirement for fire escapes for all public buildings. The language will read as follows:

“In addition to the powers hereinbefore specifically enumerated, said city shall have the power to define all nuisances, prohibit the same within the city and outside the city limits for a distance of five thousand feet.

To police all parks, grounds, speed ways, streets, avenues and alleys owned by said city within or without the city limits.

To prohibit the pollution of all sources of water supply of said city, and to provide for the protection of water sheds.

To inspect dairies, slaughter pens, and slaughter houses, inside and outside the city limits of the city, from which meat or milk is furnished to the inhabitants of the city.

To license, operate and control the operation of all character of vehicles using public streets, and to prescribe the speed of the same, the qualifications of the operator of the same, and the lighting of the same by night and to provide for the giving of bond or other security for the operation of same.

To regulate, license and fix charges of fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or transportation of freight for hire on the public streets and alleys of the city.

To license any lawful business, occupation or calling that is susceptible to the control of the police power.

To license, regulate, control or prohibit the erection of signs or bill boards within the corporate limits of said city.

To provide for Police and Fire Departments.

To provide for a Health Department and to establish all necessary rules and regulations protecting the health of the city and the establishment of quarantine stations and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

To require property owners to make connections with the sewer system with their premises and to provide for fixing a lien against any property owner's premises, who fails or refuses to make sanitary sewer connections and to charge the cost against said owner and make it a personal liability, also provide for fixing penalties for failure to make sanitary sewer connections, provided the sewer system is owned and operated by the city.

To provide that gas companies, street car companies, telephone companies, telegraph companies and electric light companies or any other companies or individuals enjoying a franchise now or hereafter from the city to make and furnish extension of their service to such territory within the corporate limits as may be prescribed from time to time by ordinance.

To provide for the regulation and control of plumbers and plumbing works and to require efficiency in the same.

To provide for the inspection of weights, measures and meters and fix a standard of such weights, measures and meters, and to require conformity to such standards, and to provide penalties for failure to use or conform to the same, and to provide for inspection fees.

To provide for the issuance of permits for erecting all buildings; for the inspection of the construction of buildings, in respect to proper wiring for electric lights and other electric appliances; piping for gas, flues, chimneys, plumbing and sewer connections, and to enforce proper regulations in regard thereto.

To provide for the enforcement of all ordinances enacted by the city, by a fine not to exceed \$200.00; provided, that no ordinances enacted by the city shall prescribe a greater or less penalty than is prescribed for a like offense by the laws of this State.”

## **VIII.**

Amending Article III, Section 36 of the City Charter to reference Chapter 9 of the Texas Local Government Code as the statute that enumerates Home-Rule authority so that the language will read as follows:

“The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the City of Burkburnett shall have and may exercise all other powers which, under the Constitution of this State and Chapter 9 of the Texas Local Government Code, it would be competent for this Charter to specifically enumerate.”

## **IX.**

Amending Article IV, Section 1 of the City Charter to establish that the Board of Commissioners shall consist of a Mayor and six (6) commissioners. This change is necessary because of other amendments establishing that the Mayor will be elected by the registered voters in Burkburnett. The language will read as follows:

“The governing body of the City of Burkburnett shall consist of a Mayor and six (6) commissioners, and said body shall be known as the "Board of Commissioners."

**X.**

Amending Article IV, Section 2 of the City Charter establishing a place system for the Commissioners, establishing that the Mayor be elected by the registered voters of Burkburnett and establishing three year terms for the Mayor and Commissioners. The language will read as follows:

“The Board of Commissioners shall be composed of the Mayor and six (6) commissioners elected at large. The commissioners shall be elected under a Place system, there being Places 1, 2, 3, 4, 5, and 6. The Mayor and each commissioner shall occupy a place on the Board and shall be elected by plurality from all candidates running for that position or place in the manner provided in this Charter and under the laws of the state of Texas, to serve for three (3) year terms. Following the election at which this Section is amended to establish the Place system, the place to be occupied by each commissioner in office shall be determined by the City Secretary in a manner that preserves the staggered term and, as near as possible, the election pattern existing prior to adoption of the Place system.”

**XI.**

Amending Article IV, Section 5 of the City Charter establishing term limits for the Commissioners, the Mayor and individuals consecutively serving in both positions. The language will read as follows:

“No person shall be elected to and serve more than three (3) consecutive terms as a Commissioner, nor may any person be elected to serve more than three (3) consecutive terms as Mayor. Notwithstanding anything herein to the contrary, no person may be elected to and serve more than five (5) consecutive combined terms as a Commissioner and Mayor. For the purposes of this section, the fulfillment of an unexpired term, due to a vacancy in the Board of Commissioners or in the office of Mayor, whether by appointment, or election, shall not be considered as an elected term under provisions of this section.”

**XII.**

Amending Article IV, Section 6 of the City Charter establishing procedures for the filling of vacancies on the Board of Commissioners. The language will read as follows:

“(A) A single vacancy in the Board of Commissioners shall be filled within thirty (30) days of the occurrence of the vacancy by a majority vote of a quorum of the remaining members of the Board by selection of a person qualified for the position as described in this Charter. This appointee shall serve until the position can be filled at the next regular City election.

(B) When more than one vacancy shall develop at any one time, a special election shall be called by the Board of Commissioners for the next date available under the Texas Election Code to fill the vacancies in the same manner as described herein for regular elections. However, if the vacancies occur within ninety (90) days of a regular election, then no special election shall be called and the remaining Commissioners shall appoint qualified persons to fill the vacancies until the regular election.”

### **XIII.**

Amending Article IV, Section 7 of the City Charter regarding the election of the Mayor Pro-Tem. The Board of Commissioners is recommending a change regarding the election of the Mayor. If the Charter amendment regarding the election of the Mayor is approved by the voters, there will be no need for the Board to elect a Mayor from its memberships. The amendment, including that change to the section title, will set forth the procedure to elect and duties of a Mayor Pro-Tem. The language will read as follows:

“Section 7. MAYOR PRO-TEM.

At the first meeting of the Board of Commissioners held after each general election in May, the Board shall elect one of its members to preside as Mayor Pro-Tem. The Mayor Pro-Tem shall have and exercise all powers of Mayor in the absence of, or during the disability from any cause of, the Mayor.”

### **XIV.**

Amending Article IV, Section 9 of the City Charter regarding the compensation of the members of the Board of Commissioners so that the members of the Board will serve without compensation. The language will read as follows:

“The members constituting the Board of Commissioners shall receive no compensation for their service.”

### **XV.**

Amending Article IV, Section 12 of the City Charter to remove language regarding the election of the Mayor by the Board of Commissioners and to remove language regarding the requirement that the Mayor sign all contracts and bonds and serve as chief executive officer for the city. The language will read as follows:

“The Mayor of the City of Burkburnett shall preside over the meetings of said Board and perform such other duties consistent with the office as may be imposed upon him by this Charter and ordinances and resolutions passed in pursuance hereof. He may participate in the discussion of all matters coming before the Board and shall be entitled to a vote as a member thereof on all legislative and other matters but shall have no veto power. He shall be recognized as the official head of

the city by the courts for the purpose of serving civil process, by the Governor for the purpose of enforcing military law, and for all ceremonial purposes. In times of danger and emergency, the Mayor, may, with the consent of the Board of Commissioners, take command of the police and govern the city by proclamation and maintain order and enforce all laws.”

**XVI.**

Amending Article IV, Section 18(B) of the City Charter to change the time of filing and posting notice of the referenced measures to seventy-two (72) hours to be consistent the time set forth in the Texas Open Meetings Act for notice of meetings. The language will read as follows:

“(B) Seventy-two (72) hours prior to the meeting at which a measure will be considered, a draft of the measure shall be filed with the City Secretary, and notice of that filing shall be posted at City Hall. The notice shall consist of the caption of the measure.”

**XVII.**

Amending Article IV, Section 20 of the City Charter to add language that an ordinance requiring publication in the official newspaper of the city will also be posted on the electronic version of that newspaper if the newspaper has an electronic version of its paper. The language will read as follows:

“Every ordinance imposing any penalty, fine, imprisonment or forfeiture shall, after the passage thereof, be published in every issue of the official paper, including inclusion on the electronic form, if any, of the newspaper, for ten days; if the official paper be published weekly, the publication shall be made in one issue thereof; and proof of such publication shall be made by the printer or publisher of such paper, making affidavit before some officer authorized by law to administer oaths, and filed with the person performing the duties of City Clerk or Secretary and shall be prima facie evidence of such publication and promulgation of such ordinance in all courts of the State, and such ordinance so published shall take effect, and be in force, from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect, and be in force from and after the passage, unless otherwise provided.

**XVIII.**

Amending Article IV, Section 23 of the City Charter to allow for an ordinance amending the Code of Ordinances or a city ordinance to include only the language that is being amended. Since the City has codified many of its ordinances in the Code of Ordinances, there is no need for each ordinance that amends the Code of Ordinances to contain the entire language of the previous ordinances adopting that chapter or section. The revised language allows the ordinance to contain the entire language but does not make it mandatory. The language will read as follows:

“The Code of Ordinances and ordinances of the city may be amended by ordinance. The ordinance amending the Code of Ordinances or an ordinance may contain only the portion of the Code of Ordinances or ordinance that is being amended.”

**XIX.**

Amending Article IV, Section 33 of the City Charter to cause that the audit of the City books of accounts of each and every department, although continuous, shall be completed annually or in accordance with state law. The language will read as follows:

“The Board of Commissioners shall cause a continuous audit to be made of the books of accounts of each and every department of the city. Such audit shall be made by a nonresident certified public accountant, who shall be selected by said Board and contract entered into from year to year, and, if practicable, such contract shall provide that the books of the city shall be audited annually or in accordance with state law, the last audit to be made at the close of the fiscal year and which shall be a recapitulation of the quarterly audits, and such auditor’s report to the Board, in a condensed form, shall be published at least once in the official organ of the city.”

**XX.**

Amending Article IVa, Section 1 of the City Charter to correct a typographical error changing the word “fall” to “fill” so that the language shall read as follows:

“Any member of the Board of Commissioners, whether elected to office by the qualified electors of the city or elected by said Board to fill a vacancy, shall be subject to recall and removal from office by the qualified electors of the city as in this Charter provided.”

**XXI.**

Amending Article IVa, Section 2 of the City Charter to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city. The language will read as follows:

“Before the question of recall of such officers shall be submitted to the qualified electors of the city, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of City Clerk or Secretary, which said petition shall be signed by at least thirty percent of the qualified voters of the city, to be determined by the latest voter registration list of the city. Each signer of such recall petition shall personally sign his name thereto in ink or indelible pencil, and shall write after his name, his place of residence, giving name of street and number, and shall also write thereon the day of the month and year his signature was affixed.

**XXII.**

Amending Article IVa, Section 5 of the City Charter to allow for a period of twenty (20) days for the City Clerk to certify a recall petition and set procedures for recall petitions that do not meet the requirements for a recall petition. The language will read as follows:

“Within twenty (20) days after the date of the filing of the papers constituting the recall petition, the City Clerk shall certify to the Board of Commissioners the number of qualified voters within the City of Burkburnett, shall further certify the number of qualified voters signing said petition, and shall present such petition and his certificate thereto to said Board. The City Clerk shall declare void any papers constituting the recall petition which does not meet the requirements of Section 3 of this Article. If the papers constituting the recall petition are found by the City Clerk to be insufficient, the City Clerk shall notify the person filing the petition. The person filing the petition shall have fifteen (15) days from the date of such notice to file an amended or supplementary petition signed and filed as prescribed in the original petition. Within ten (10) days after the person files the supplemental petition, the City Clerk shall examine the amended or supplemental petition and certify its sufficiency. If the City Clerk finds the amended or supplementary petition to be insufficient, there shall be no further proceedings on the petition.

**XXIII.**

Amending Article IVb, Section 2(a) of the City Charter to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city. The language will read as follows:

“(a) PETITION: A petition signed and verified in the manner and form required for recall petition in Article IVa by qualified electors equal to twenty percent of the total qualified electors of said city, as shown by its voter registration list, accompanied by the proposed legislation or measure in the form of a proposed ordinance or resolution, which must be written or printed, and requesting that such ordinance or resolution be submitted to a vote of the qualified electors, if not passed by the Board of Commissioners, shall be filed with the person performing the duties of City Clerk or Secretary.”

**XXIV.**

Amending Article IVb, Section 2(b) of the City Charter to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city. The language will read as follows:

“(b) CERTIFICATE: Within five days after the filing of such petition the person performing the duties of City Clerk or Secretary shall certify the number of qualified voters residing in said City of Burkburnett, as shown by its voter registration list, and the number of signers of such petition, and shall present said

certificate, petition and proposed ordinance or resolution to the Board of Commissioners.”

**XXV.**

Amending Article IVb, Section 3 of the City Charter to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city. The language will read as follows:

“If, prior to the date when an ordinance or resolution shall take effect, or within thirty days after the publication of same, a petition signed and verified as required for recall petition in Article IVa and by section 2 (a) hereof, by the qualified voters of said city equal in number to twenty percent of the total qualified voters of said city, as shown by its latest voter registration list, shall be filed with the person performing the duties of City Clerk or Secretary, protesting against the enforcement or enactment of such ordinance or resolution, it shall be suspended from taking effect and no action theretofore taken under such ordinance or resolution shall be legal and valid. Immediately upon the filing of such petition, the person performing the duties of City Clerk or Secretary shall do all things required by section 2 (a) of this Article. Thereupon the Board of Commissioners shall immediately re-consider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote at the next municipal election, or said Board may, in its discretion call a special election for that purpose; and such ordinance or resolution shall not take effect unless a majority of the qualified electors voting thereon at such election shall vote in favor thereof.”

**XXVI.**

Amending Article V, Section 1 of the City Charter to add language that the City will enter into an employment agreement with the individual who holds the position of City Manager. The language will read as follows:

“The Board of Commissioners shall appoint the City Manager at the organization meeting of said Board or as soon thereafter as practicable, who shall be the administrative head of the municipal government, under the direction and supervision of said Board. The Board of Commissioners shall enter into an employment agreement with the City Manager.”

**XXVII.**

Amending Article V, Section 2 of the City Charter to add language that the individual who is hired as City Manager and does not live within the City limits of the City of Burkburnett must move within the City limits within 90 days of employment as City Manager. The language will read as follows:

“The City Manager may or may not be a resident of the City of Burkburnett when appointed. The individual hired as City Manager will have ninety (90) days from their appointment as City Manager to move within the City limits of the City of Burkburnett.”

**XXVIII.**

Amending Article V, Section 5c of the City Charter to remove the following language “and all subordinate employees of the city”. The language will read as follows:

“(c) With the advice and consent of the Board of Commissioners to appoint and remove all heads of departments (except where this Charter places in the Board of Commissioners such power of appointment);”

**XXIX.**

Amending Article VIII, Section 1 of the City Charter to remove language allowing an individual requesting a franchise to force an election and adding a reference to Chapter 311 of the Texas Transportation Code. The language will read as follows:

“The right of control, easement, user and the ownership of and title to the streets, highways, public thoroughfares and property of the City of Burkburnett, its avenues, parks, bridges, and all other public places and property are hereby declared to be inalienable, except by ordinance duly passed by a majority of all of the members of the Board of Commissioners and in accordance with Chapter 311 of the Texas Transportation Code; and no grant of any franchise, or lease or right to use the same, either on, along, through, across, under or over the same by any private corporation, association or individual, shall be granted by the Board of Commissioners, unless submitted to the vote of the legally qualified voters of the city, for a longer period than thirty years; provided. Even after election, no grant shall be made or authorized for a longer period than fifty years.”

**XXX.**

Amending Article VIII, Section 8 of the City Charter to change the language regarding calling a franchise election to be order when the Board of Commissioners receives a petition signed by 10% of the registered voters of Burkburnett. Previous language required that the petition be signed by one hundred legally qualified voters. The change amends the section so that it is consistent with state law. The language will read as follows:

Pending the passage of any such ordinance or during the time intervening between its final passage and the expiration of the thirty days before which time it shall not take effect, it is hereby made the duty of the Board of Commissioners to order an election, if requested by written petition signed by 10% of the registered voters of Burkburnett, at which election the registered voters of Burkburnett shall vote for or against the proposed grant as set forth in detail by the ordinance conferring the

rights and privileges upon the applicants therefor, which said ordinance shall be published at length and in full in the call for said election made by the Board of Commissioners, and if at said election the majority of the votes cast shall be for said ordinance and the making of said proposed grant, the same shall thereupon become effective, but if a majority of the votes cast at said election so held shall be against the passage of said ordinance and the making of said grant, said ordinance shall not pass nor shall it confer any rights, powers or, privileges of any kind whatever upon the applicants therefor, and it shall be the duty of said Board, after canvassing the vote of said election to pass an ordinance repealing the ordinance which has been by it passed, if the same has been passed.

**XXXI.**

Repealing Article IX, Section 1 of the City Charter which allows the City Manager to appoint a City Tax Assessor-Collector.

**XXXII.**

Amending Article IX, Section 7B of the City Charter to update the language regarding securing a tax warrant and to make reference to the applicable state law, Chapter 33 of the Texas Tax Code. The language will read as follows:

“(B) Business and Non-Business Personal Property. Upon securing a tax warrant as provided by Chapter 33 of the Texas Tax Code or other applicable state law, the city tax collector, accompanied by a peace officer, may seize, and take possession pending the sale of, as much of any business personal property, or certain non-business taxable personal property as may be reasonably necessary for the payment of all taxes, penalties, and interest owed, as well as all costs of seizure and sale.”

**XXXIII.**

Adding Article XIII, Section 7 to the City Charter to clarify that the use of masculine, feminine or neuter genders shall be interpreted to include the other genders and the use of either the singular or plural number shall be interpreted to include the other number, unless such an interpretation is inconsistent with the use of that gender or number. The language will read as follows:

“Section 7. USE OF GENDER AND NUMBER.

The use of the masculine, feminine or neuter genders shall be interpreted to include the other genders, and the use of either the singular or the plural number shall be interpreted to include the other number, unless such an interpretation in a particular case is inconsistent with the use of that gender or number.”

**Section 3**

The official ballots to be used in this special election shall comply with the applicable provisions of the Texas Election Code, shall state each proposed amendment separately and distinctly so that the voters shall pass upon each amendment separately and apart from another so that each voter

may vote “For” or “Against” any amendment or amendments without voting “For” or “Against” all such amendments, and shall have written or printed thereon the following:

**CHARTER AMENDMENTS**

**I.**

- FOR
- AGAINST

Shall Article III, Section 4 of the City Charter be amended to correct a typographical error changing the word “choses” to “choices”?

**II.**

- FOR
- AGAINST

Shall Article III, Section 10 of the City Charter be amended to authorize the City to exercise eminent domain authority as provided by the Constitution and laws of the State?

**III.**

- FOR
- AGAINST

Shall Article III, Section 18 of the City Charter be amended to correct a typographical error changing the word “damand” to “demand”?

**IV.**

- FOR
- AGAINST

Shall Article III, Section 30 of the City Charter regarding the setting of fire limits within the City be repealed?

**V.**

- FOR
- AGAINST

Shall Article III, Section 31 of the City Charter regarding the requirement to use certain materials for construction within the fire limits be repealed?

**VI.**

- FOR
- AGAINST

Shall Article III, Section 32 of the City Charter allowing the Board of Commissioners to extend the boundary of the fire limits be repealed?

**VII.**

- FOR
- AGAINST

Shall Article III, Section 34 of the City Charter be amended to remove the language which requires the construction of fire escapes on all public buildings?

**VIII.**

- FOR
- AGAINST

Shall Article III, Section 36 of the City Charter be amended to reference Chapter 9 of the Local Government Code as the appropriate statute for the enumeration of Home-Rule municipal authority?

**IX.**

- FOR
- AGAINST

Shall Article IV, Section 1 of the City Charter be amended to establish that the Board of Commissions shall consist of the Mayor and six (6) commissioners?

**X.**

- FOR
- AGAINST

Shall Article IV, Section 2 of the City Charter be amended to establish the place system for the election of Commissioners, establish that the Mayor is elected by the registered voters of Burkburnett and establishing three year terms of office for the Mayor and Commissioners?

**XI.**

- FOR
- AGAINST

Shall Article IV, Section 5 of the City Charter be amended to set a term limit of three (3) consecutive terms for Commissioner, a term limit of three (3) consecutive terms for Mayor and a term limit of five (5) consecutive terms for individuals who serve as both Commissioner and Mayor?

**XII.**

- FOR
- AGAINST

Shall Article IV, Section 6 of the City Charter be amended to establish that the Board of Commissioners shall fill a single vacancy on the Board by majority vote of a quorum of the remaining members of the Board within thirty (30) days of the occurrence of the vacancy, to establish that the Board of Commissioners will call a special election in the event that there are more than one vacancy on the Board at one time and to establish the timing for the special election?

**XIII.**

- FOR
- AGAINST

Shall Article IV, Section 7 of the City Charter be retitled Mayor Pro-Tem and amended to remove the language regarding the election of the Mayor by the Board of Commissioners and set out the procedures for the Board of Commissioners to elect and the duties of the Mayor Pro-Tem?

**XIV.**

- FOR
- AGAINST

Shall Article IV, Section 9 of the City Charter be amended to remove the language regarding compensation for members of the Board of Commissioners so that the members of the Board of Commissioners shall serve without compensation?

**XV.**

- FOR
- AGAINST

Shall Article IV, Section 12 of the City Charter be amended to remove language regarding the election of the Mayor by the Board of Commissioners and to remove language regarding the requirement that the Mayor sign all contracts and bonds and serve as chief executive officer for the city?

**XVI.**

- FOR
- AGAINST

Shall Article IV, Section 18(b) of the City Charter be amended to change the time of filling and posting notice of certain measures to seventy-two (72) hours to be consistent with the time set forth in the Texas Open Meetings Act for notice of meetings?

**XVII.**

- FOR
- AGAINST

Shall Article IV, Section 20 of the City Charter be amended to add language that an ordinance requiring publication in the official newspaper of the city will also be posted on the electronic version of that newspaper, if the newspaper has an electronic version of its paper?

**XVIII.**

- FOR
- AGAINST

Shall Article IV, Section 23 of the City Charter be amended to allow for an ordinance amending the Code of Ordinances or a city ordinance to include only the language that is being amended or added?

**XIX.**

- FOR
- AGAINST

Shall Article IV, Section 33 of the City Charter be amended to cause that the audit of the City books of accounts of each and every department, although continuous, shall be completed annually or in accordance with state law?

**XX.**

- FOR
- AGAINST

Shall Article IVa, Section 1 of the City Charter be amended to correct a typographical error changing the word “fall” to “fill”?

**XXI.**

- FOR
- AGAINST

Shall Article Iva, Section 2 of the City Charter be amended to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city?

**XXII.**

- FOR
- AGAINST

Shall Article IVa, Section 5 of the City Charter be amended to set a period of twenty (20) days for the City Clerk to certify a recall petition; to authorize the City Clerk to determine whether a recall petition is void, to set a period of fifteen (15) days for the person filing a recall petition to amend or supplement the petition to make it valid in the event a petition is declared void and set a period of ten (10) days for the City Clerk to review an amended or supplemental documentation for certification?

**XXIII.**

- FOR
- AGAINST

Shall Article IVb, Section 2(a) of the City Charter be amended to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city?

**XXIV.**

- FOR
- AGAINST

Shall Article IVb, Section 2(b) of the City Charter be amended to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city?

**XXV.**

- FOR
- AGAINST

Shall Article IVb, Section 3 of the City Charter be amended to remove the reference to the poll tax list and substitute “voter registration list” as the base for the calculation of the qualified voters of the city?

**XXVI.**

- FOR
- AGAINST

Shall Article V, Section 1 of the City Charter be amended to add language that the City will enter into an employment agreement with the individual who holds the position of City Manager?

**XXVII.**

- FOR
- AGAINST

Shall Article V, Section 2 of the City Charter be amended to require that the individual who is hired as City Manager and does not live within the City limits of the City of Burkburnett must move within the City limits within 90 days of employment as City Manager?

**XXVIII.**

- FOR
- AGAINST

Shall Article V, Section 5c of the City Charter be amended to remove the authority for the City Manager to dismiss employees who are not heads of departments?

**XXIX.**

- FOR
- AGAINST

Shall Article VIII, Section 1 of the City Charter be amended to remove language allowing an individual requesting a franchise to force an election and adding a reference to Chapter 311 of the Texas Transportation Code?

**XXX.**

- FOR

AGAINST

Shall Article VIII, Section 8 of the City Charter be amended, consistent with state law, so that the Board of Commissioners shall have a duty to order an election regarding a franchise ordinance when it receives a petition signed by 10% of the registered voters of Burkburnett?

**XXXI.**

FOR

AGAINST

Shall Article IX, Section 1 of the City Charter regarding the appointment of the City Tax Assessor-Collector be repealed?

**XXXII.**

FOR

AGAINST

Shall Article IX, Section 7B of the City Charter be amended to update the language regarding securing a tax warrant and to make reference to the applicable state law, Chapter 33 of the Texas Tax Code?

**XXXIII.**

FOR

AGAINST

Shall Article XIII, Section 7 be added to the City Charter to clarify that the use of masculine, feminine or neuter genders shall be interpreted to include the other genders and the use of either the singular or plural number shall be interpreted to include the other number, unless such an interpretation is inconsistent with a specific use of that gender or number?

**Section 4**

**POLLING PLACES**

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Carl Law, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Review Proposed Language Stage 5 Drought Restrictions

### Background

### Fiscal Impact

N/A

### Options

- Approve Stage 5 Restrictions as presented
- Approve Stage 5 Restrictions with revisions (Council)
- Do nothing at this time

### Staff Recommendation

Staff recommends approving Stage 5 Restrictions as presented

### Attachments

Copy of Water Contract with Wichita Falls  
Copy of Wichita Falls Stage 5 Restrictions  
Proposed Stage 5 Restrictions for City of Burkburnett

## Potable Water Purchase Contract

THIS CONTRACT for the sale and purchase of potable water (the "Contract") is entered into as of the 6th day of July, 2010, between the City of Wichita Falls, Texas, hereinafter referred to as "City," and the City of Burkburnett, hereinafter referred to as "Customer" (City and Customer are collectively the "Parties").

WHEREAS, Customer is organized and established under provisions of the laws of the State of Texas. One of the duties of Customer is the operation of a water distribution system serving water users within Customer's authorized service area, and to accomplish this purpose, Customer requires a supply of potable water;

WHEREAS, City owns several water reservoirs and a treatment and distribution system (the "City System") with capacity capable of serving the present customers of the City System and the estimated number of water users to be served by Customer;

WHEREAS, City and Customer entered into a Water Purchase Contract on May 20, 2003, and subsequently agreed to multiple modifications to the contract, and this Contract replaces all prior contracts between the Parties relating to the purchase of potable water ("Water");

WHEREAS, immediately prior to the effective date of this Contract, Customer was not obligated to purchase Water from City and City was not obligated to sell Water to Customer;

WHEREAS, by resolution of the City Council of Customer enacted on the 17<sup>th</sup> day of May, 2010, it authorized the continued purchase of Water by Customer under the terms of this new, mutually agreed upon Contract;

WHEREAS, Customer is responsible for operating its water distribution system ("Customer System"), and providing Water to its authorized service area as described herein; and

WHEREAS, Customer is required by Texas Commission on Environmental Quality ("TCEQ") regulations to implement and enforce City's Water Conservation and Drought Contingency Plan through all subsequent sales of Water and shall include such obligation in any subsequent contract for sale that Customer may execute with any third party purchaser of Water.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for value received, City and Customer mutually agree to the following, to wit:

**1.0. Delivery of Water.** City agrees to sell and to deliver Water under this Contract to Customer at the delivery point(s) specified herein, and Customer agrees to take at the delivery point(s) all Water required for use during the term of this Contract, not to exceed the annual quantity of Water. The monthly quantity of Water to be furnished by City to Customer shall not exceed 120,000,000 gallons per month ("Monthly Quantity") not to exceed a maximum of 608,000,000 gallons per year ("Annual Quantity") in any Water Year unless a greater amount is approved in writing by City. "Water Year" means the period October 1 of each calendar year through September 30 of the next following calendar year. The Monthly Quantity is calculated as the amount of water Customer consumes in a normal monthly billing cycle. Customer shall not take more than the Annual Quantity without prior written consent of City. Customer agrees that City is under no obligation to provide Customer with a sufficient amount of Water for Customer to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Customer under Texas Administrative Code, Chapters 290 or 291, or any other requirement of law. Customer also agrees that City is under no obligation to increase any of its water utility infrastructure or capacity in order to satisfy any of the provisions of this Contract.

**1.1 Delivery Point.** The delivery point(s) shall be located on a sixteen inch (16") main on the west side of I-44, 1.7 miles north of East Road; or another satisfactory delivery point with the approval of City.

**1.2 Quality of Water.** City will exercise due diligence and follow best management practices to meet the applicable drinking water quality standards for Water and any requirement of law for Water furnished to Customer pursuant to this Contract.

**1.3 Customer System Requirements.** Once Customer takes Water from the delivery point(s), Customer is solely responsible for complying with the requirements under Texas Administrative Code, Chapters 290 or 291, or any other requirement of law. Customer shall have the responsibility to transport the Water from the delivery point(s) to its consumers, including imparting additional pressure to adequately serve Customer's consumers.

**1.4. Metering.** Customer shall furnish, install, operate and maintain at its own expense at the delivery point(s), the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring and recording the quantity of Water delivered. City and Customer shall agree on the type of any replacement meter before purchase by Customer. Metering equipment shall be calibrated by Customer whenever requested by City, but not more frequently than once every 12 months. Within 30 days after such calibration, Customer shall furnish a certification of such calibration to the Director of Public Works of City, or his designee. A meter registering not more than 2% above or below the rated capacity of the meter shall be deemed accurate. The previous reading of any meter disclosed by test to be inaccurate shall be corrected for the 12 months previous to such test in accordance with the percentage of inaccuracy found by such tests and existing records. If any meter fails to register for any period, the amount of Water furnished during such period shall be deemed to be the amount of Water diverted in the corresponding period immediately prior to the failure, based on existing records unless City and Customer shall agree in writing upon a different amount. If Customer's measuring equipment is out of service for 30 days or more, City may purchase, install and maintain any required measuring equipment, as determined by City, and charge the expense therefore to Customer.

During any reasonable hours, City shall have access to the metering equipment. City shall further have access to all records pertinent to determining the measurement and quantity of Water actually delivered. Customer agrees that City may furnish, install, operate and maintain check meters, should City so choose. Customer also agrees that the design and construction of its metering equipment will facilitate City's installation and operation of check meters.

City will read the Customer water meter on the first normal work day of each month during the term of this Contract. Customer and City shall have free access to read meters daily if they so desire. City will provide Customer, no later than the 10th day of each month, with an itemized statement showing the amount of Water metered to Customer during the preceding month and the resulting charges. Customer shall pay to City the amount of the itemized statement no later than the 20th day of the month in which the charges are billed.

All services on Customer's System shall be separately metered.

**2.0. Water Rates.** Until changed by City, the cost of Water purchased by Customer shall be \$3.1845 per 1,000 gallons or \$2.3820 per 100 cubic feet. The rates to Customer for Water shall be subject to change each year as a result of a cost-of-service study using the rate principles in section 2.1. When a cost-of-service study is conducted, City will provide the results and the new rates to Customer. The new rates will become effective at the beginning of each Water Year. Adjustments to rates does not constitute an amendment to the Contract. If Customer exceeds either the Monthly Quantity or the Annual Quantity, the City shall be entitled to bill for such exceedance and Customer hereby agrees to pay for such exceedance at 2.0 times the water rate.

**2.1. Annual Changes to Water Rates.** Customer authorizes the rates for Water to be changed annually, based on the following rate setting principles:

- a. Revenue requirements to be determined on utility basis at an agreed test year's original Cost adjusted 30% toward current cost to cover its cost and as compensation for ownership. The test year shall be the most recent audited City fiscal year.
- b. City to receive a Rate of Return on the agreed adjusted value Rate Base equal to a composite of the utility's test year embedded cost of money weighted on the debt portion of capital invested in plant in service

and the utility's latest cost of money weighted on the remaining equity portion of plant in service to cover its risks.

c. All existing reservoirs and associated facilities to be included in common rate base. Wholesale customers as class (either raw water only, raw water transmitted, treated water only and transmitted treated water) will pay their proportionate share of all costs based on current use.

d. A flat rate (volume only), shall be charged, with allocation of 100% current use to encourage conservation and thereby resulting in efficient utilization of the water system; provided, however, that the amount billed each month shall never be less than any agreed monthly minimum charge.

e. The risk of financing all future raw water transmission lines and reservoirs must be borne by the City Water utility, and all costs will be allocated to all wholesale customers on current use basis.

The rates will be considered changed on the later of (1) the date City's Director of Public Works sends a written Notice of Rate Modification to Customer's address as provided in this Contract or (2) the effective date of the aforementioned Notice of Rate Modification.

**2.2. Disputed Rates.** Customer stipulates and agrees that the rate, rate setting methods, and policies specified in this Contract are fair, just, and reasonable, and without discrimination. Further, if Customer believes that rates have been modified in a manner that fails to conform to the aforementioned principles or are otherwise established in a manner that is not just or reasonable, then Customer must send a written Notice of Appeal, containing the written approval of the Directors, to City's City Manager, 30 calendar days after City's written issuance of the new rates to the Customer. To be effective, such Notice of Appeal must contain a statement, sworn to by all directors of Customer and all experts the Customer intends to use to assert the improper, unjust, or unreasonable manner of the rates, that entirely states the full and complete basis upon which the Customer believes that the rates were improperly, unjustly or unfairly established. Upon receipt of the Notice of Appeal, City's City Manager will consider the appeal and examine the rate determination process and result. If City's City Manager determines the appeal is well founded, he/she may reconsider the rates and issue new, higher or lower rates based on the information submitted and other information determined by subsequent investigation thereof.

If Customer at any time disputes the amount to be paid by it to City, Customer shall nevertheless promptly make the disputed payment or payments. If it is subsequently determined by or agreed that the disputed amount paid by Customer should have been less or more, City shall revise and reallocate Customer's payments in a manner that Customer or City will recover the amount properly due.

If a court, the Commission, or any federal or state regulatory authority finds that City's rates or policies for delivering Water to Customer under this Contract are unreasonable or otherwise unenforceable, City may immediately terminate this Contract without liability to Customer. By signing this Contract, Customer stipulates and agrees that City and its other customers will be prejudiced if Customer avoids the obligation to pay the rates for Water specified in this Contract while accepting the benefits of obtaining Water from City. Nothing in this Contract shall be construed as constituting an undertaking by City to furnish Water to Customer except pursuant to the terms of this Contract. If Customer initiates or participates in any proceeding regarding City's rates and policies under this Contract and advocates a position that is adverse to City and City prevails, Customer shall pay City for its expenses, including attorneys' fees and expert witness fees, in the proceeding within 30 days after City's demand for payment. Notwithstanding, City shall never have any obligation to pay the attorneys' fees or expert fees of Customer as a result of any fee determination or proceeding relating to this Contract.

**2.3. Additional Charges.** In the event that any sales or use taxes, or taxes, assessments, or charges of any similar nature are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the Water received by Customer from the Delivery Point, the amount of the tax, assessment, or charge shall be borne by Customer, in addition to all other charges, and whenever City shall be required to pay, collect, or remit any tax, assessment, or charge on Water received by Customer, then Customer shall promptly pay or reimburse City for the tax, assessment, or charge in the manner directed by City.

**2.4. Default in Payments.** All amounts due and owing to City by Customer shall, if not paid when due, bear interest at the Texas post-judgment interest rate set out in Tex. Finance Code. § 304.003, or any successor statute, from the date when due until paid. If any amount due and owing by Customer to City is placed with an attorney for collection, Customer shall pay to City, in addition to all other payments provided for by this Contract, including interest, City's collection expenses, including court costs and attorneys' fees. City shall, to the extent permitted by law, suspend delivery of Water from the Delivery Point to Customer if Customer remains delinquent in any payments due hereunder for a period of 60 days and shall not resume delivery of Water while Customer is so delinquent and may, at its option, terminate this Contract without further liability to Customer. City shall pursue all legal remedies against Customer to enforce and protect the rights of City, City's customers, and the holders of City's bonds. It is understood that the foregoing provisions are for the benefit of the holders of City's bonds.

**3.0. Purpose and Place of Use.** Customer shall not be required to furnish Water to any resident of City. The Parties hereby agree that City shall continue to serve these areas. If City extends its City limits, Customer will continue to provide Water to any consumer of Water from Customer until City is able to extend its own distribution system to provide such customers with City's Water. The Water will be used for municipal use, including residential and commercial uses, by Customer within the authorized service area of the Customer. Customer's authorized service area is [the area located within Customer's Extraterritorial Jurisdiction ("ETJ") boundary] / [the area authorized in Customer's certificate of convenience and necessity ("CCN")]. Unless written permission is obtained from City, Water shall not be provided to other municipalities and/or residential and/or commercial subdivisions outside the authorized service area. Such permission will not be given to serve a subdivision within the City's Extraterritorial Jurisdiction ("ETJ") unless the subdivision complies with the Subdivision Regulations of the City of Wichita Falls. Customer shall not sell any Water to any private party for resale by such private parties to third parties. Customer shall be allowed to make single connections to Customer system with notification to City of such action, provided the Annual Quantity allowable as set out in the Contract is not exceeded. Customer shall not sell Water to any consumer outside of the Customer's authorized service area without the approval of City.

**3.1. Subsequent Sales of Water/Connections.** City and Customer agree that for any area of service being provided by Customer that Customer will comply with applicable City procedures for purposes of connection and connection approvals in any area lying within City's ETJ boundary (or within the city limits). Further, it is agreed by City and Customer that in the event of a prospective customer's application for service outside of City's ETJ boundary, no pre-conditions are to be established or enforced by City in connection with any request for service made by any applicant for water service.

Customer expressly agrees that it will not furnish Water to any user without first requiring proof from the applicant that the property to be serviced has been platted in accordance with Texas Local Government Code Chapter 212, as it may be amended from time to time, within the Contract term. When a meter is approved by the Customer, such approval shall be tied to the land and automatically approved to the current owner of the land.

**4.0. Water Shortages.** In the event of an extended shortage of Water, or the supply of Water available to City is otherwise diminished over an extended period of time so that it becomes necessary to ration the Water sold to citizens of City, the supply of Water to Customer shall be reduced or diminished in the same ratio or proportion as the supply to the citizens of City is reduced or diminished. The Water to be distributed shall be further divided in accordance with Texas Water Code § 11.039.

**4.1. Water Conservation and Drought Contingency Plan.** The Customer agrees to implement and enforce City's Water Conservation and Drought Contingency Plan through all subsequent sales of Water and shall include such obligation in any subsequent contract for sale that Customer may execute with any third party purchaser of Water. Further, the Customer agrees to initiate at least the restrictions of said Drought Contingency Plan that are being implemented within the City. The Customer may implement more severe restrictions than City, but shall not enact less severe restrictions than are currently in effect in the City. If Customer fails to implement a drought contingency plan with restrictions that emulate or exceed City's Drought Contingency Plan when trigger conditions occur, then City's City Manager is authorized to institute rationing pursuant to any applicable wholesale water contracts, including this Contract, as well as enforce any contractual, statutory, or common law remedies available to City necessary to protect the public welfare. City's Water made available to Customer when Customer is not in

compliance with City's Water Conservation and Drought Contingency Plan will be reduced to the amount of Water that City's City Manager estimates would be necessary to satisfy Customer's demand if Customer was operating in compliance with both City's and Customer's Drought Contingency Plans.

**5.0. Rules and Regulations.** To the extent permitted by applicable law, Customer's tariff and applicable TCEQ regulations, Customer expressly agrees that it will not furnish Water to any user without first requiring proof from the applicant that any wastewater generated from the use of Water supplied will be disposed of in a manner consistent with current TCEQ regulations. Customer agrees to terminate water service to any user with a continuing unabated public nuisance, as defined in the Texas Health and Safety Code, upon receiving written notice requesting such termination from TCEQ or its designated representatives.

**5.1. Backflow Protection.** Customer and City shall have the authority and responsibility of inspection to determine that no cross connections or conditions of backflow or back-siphonage exist on that portion of the system receiving Water under pressure from City's water mains. City shall have the authority to disconnect the Water until correction within the Customer System is made. City shall also have the right to suspend delivery of Water in the event Customer fails to construct, maintain and operate City's portion of the water distribution system in substantial compliance with such standards referred to hereinabove. Provided, however, unless substantial noncompliance constitutes a safety and/or health hazard, City shall not suspend the delivery of Water without first notifying Customer in writing of such noncompliance and affording Customer a reasonable opportunity to correct such noncompliance. Provided, further, in no event shall City suspend delivery of Water to any portion of Customer's system not necessary in isolating the location of such noncompliance.

**6.0. Term.** This Contract shall extend for a term of **20 years** from the date of Contract execution. Unless a written notice of non-renewal is sent by either party prior to expiration hereof, at the end of the original term, it shall then automatically renew on a year-to-year basis. Either party may cancel prior to expiration of a term for breach or non-performance. City may cancel this Contract at any time during any term of the Contract in the event Customer fails to make any payment due hereunder within 60 days after same becomes due or, if the Customer breaches any covenant herein other than payment of the monthly statement, and such breach continues for 60 days after City gives Customer written notice thereof.

**7.0. No Assignment or Discrimination.** This Contract shall not be assignable by either party without the approval of the other party. The Parties hereto shall not discriminate against any employee or applicant for employment or service because of race, religion, color, sex, national origin, age, or handicap.

**8.0. Independent Contractor.** This Contract is intended to create an independent contractor relationship, and the employees of each party shall never be considered the employees of the other party.

**9.0. Notices to Customer.** Notices from City representatives to Customer issued pursuant to this Contract shall be effective when sent to the Customer at the following address:

City Manager – City of Burkburnett  
501 Sheppard Road  
Burkburnett, Texas 76354

If a document is sent to Customer via certified mail, notice shall be considered received by the Customer if a representative of the Customer fails to sign for or accept said document within 5 days after receipt thereof.

**10.0. Title to Water.** Title for liability purposes to all Water supplied hereunder to Customer shall be in City up to the Point(s) of Delivery, at which point title shall pass to Customer. Notwithstanding, Customer will not obtain any water rights in any wastewater effluent flows or the continuation thereof.

**11.0 City Right to Execute other Water Supply Contracts.** City maintains its right to enter into any other water supply contracts without restriction.

### **12.0. No Third-Party Beneficiaries.**

This Contract shall inure only to the benefit of the Parties hereto, and third persons not privy hereto shall not, in any form or manner, be considered third-party beneficiaries of this Contract. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and City shall not be construed to be responsible for Customer's contracts or commitments by virtue of this Contract or any provision contained herein.

### **13.0. Choice of Venue.**

All acts performable under the terms of this Contract and all amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Wichita County, Texas, said Wichita County, Texas, being the place of performance agreed to by the Parties to this Contract. In the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought solely in Wichita County, Texas.

### **14.0. Pledge of Revenue.**

Customer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary operating expenses of its system, and that all such payments will be made from the revenues of its water system. Customer represents and has determined that the water supply to be obtained from City is absolutely necessary and essential to the present and future operation of its water system and is the only available and adequate source of supply of Water therefore, and, accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of Customer's system or systems as described above with the effect that the obligation to make such payments from revenues of such system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or both, with respect to all bonds heretofore or hereafter issued by Customer with the exception of any loan to Customer from the United States of America for financing Customer's water system. With respect to Customer's obligations to the United States of America for financing Customer's water system, the City and the United States of America shall have equal priority. Customer agrees throughout the term of this Contract to continuously operate and maintain its water system and to fix and collect such rates and charges for water services to be supplied by its water system as will produce revenues in an amount equal to at least (i) all of its payments under this Contract and (ii) all other amounts as required by the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding. Unless otherwise specifically provided in writing by subsequent Contract between City and Customer, all payments due by Customer are to be made from the revenues and income received by Customer from the ownership and operation of its water system.

**15.0. Indemnity.** Customer shall defend, indemnify and hold harmless City and City's officers, agents, and employees from all suits, actions, or claims of any character, name and description including attorneys' fees and expenses brought for any injuries to persons or damages to property in connection with the performance or attempted performance of this Contract. Customer expressly agrees to defend, indemnify and hold harmless City and City's officers, agents, and employees in accordance with this clause regardless of whether the injury or damage is caused in whole or in part by the acts, or omissions, including negligence, of City or its officers, agents or employees or any condition of City's property.

**16.0. Amendments to be in Writing.** The Parties to this Contract agree that they have read all provisions of this Contract and any exhibits hereto. This Contract and any exhibits hereto are the complete and exclusive statements of the terms agreed upon, superseding all prior Contracts or statements, either written or oral. No modification, amendment, or addition to this Contract is valid unless in writing and signed by all Parties hereto, except that rates may be established by City as provided above.

**17.0. Severability.** If any of the provisions of this Contract (other than the rates and obligation to pay for the Water) shall be invalid or unenforceable, same shall not invalidate or affect the validity and enforceability of any other provision, which provisions shall remain in force and effect.

**18.0. Force Majeure.** If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of each Party to make the payments required by the Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other

Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability, excluding negligence.

**19.0. No Waiver.** Failure of City to enforce a provision of this Contract does not waive any future right to enforce that provision.

**20.0. No Joint Venture.** The Parties to this Contract agree and acknowledge that this Contract does not create a joint venture, partnership, or joint enterprise, that each Party is not an agent of the other entity, and that each Party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Contract, without waiving any governmental immunity available to City or Customer under Texas law and without waiving any defenses of City or Customer under Texas law.

**21.0. Interpretation and Recitals.** This Contract shall not be considered to be mutually drafted in accordance with negotiation between the Parties hereto. Accordingly, it shall not be interpreted against City on the basis that City supplied its language or for any other reason. Recitals shall be incorporated into and become a part of this Contract.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three counterparts, each of which shall constitute an original.

Carl Law

Carl Law, Mayor

City of Burkburnett

City of Wichita Falls

Darron Leiker  
Darron Leiker, City Manager

(seal)

(seal)

ATTEST:

Lish Holley

ATTEST:

Lydia Ozuna  
Lydia Ozuna, City Clerk

APPROVED AS TO FORM:

Miles Risley  
Miles Risley, City Attorney

ORDINANCE NO. 17-2014

**Ordinance Amending Sections 106-185 and 106-186 of the Code of Ordinances of the City of Wichita Falls to Establish Modified Water Conservation Drought Contingency Rules; providing a penalty not to exceed \$2,000 per violation; providing for codification; declaring an emergency; and declaring an immediate effective date**

WHEREAS, the City Council finds that proposed changes to the City's drought contingency ordinance comply with state law and are necessary to provide for the safe and efficient operation of the City's water system;

WHEREAS, the City Council finds that the regulations in this ordinance are directly related to protecting public health and fire safety by providing for continued provision of drinking water and fire flows; and

WHEREAS, the City Council finds that the rates and fees provided herein do not exceed the minimum amount necessary to reasonably provide for the expenses of administering and enforcing the City's utility system and water conservation and drought control provisions;

WHEREAS, the City Council finds that the City is suffering from a temporary disaster caused by the worst drought in the recorded history of the City, and the City must enact regulations to preserve water for essential uses and eliminate evaporative uses of water to allow life to continue in the City;

WHEREAS, the City is in the process of acquiring additional sources of water, and these sources will include the recycling of the City's waste water, making reductions in evaporation the most valuable means of maximizing the City's remaining supply of water;

WHEREAS, these new restrictions of this ordinance are intended to temporarily restrict the loss of potable water supplied by the City in a manner that ensures it is available for water uses that return the maximum quantity of water to the City's treatment system, thereby allowing retreatment, recycling, and use for further essential uses; and

WHEREAS, for purposes of Texas Local Government Code §§ 245.004(8) & 245.004(11), the regulations pursuant to this ordinance are (1) related only to utility connections and (2) to prevent the imminent destruction of property and injury to persons.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

1. Sections 106-185 and 106-186 of the Code of Ordinances of the City of Wichita Falls are amended to read as follows:

*Soaker hose* -- an irrigation device made of permeable rubber hose that allows water to be applied slowly and directly to the soil without being sprayed up into the air. Soaker hoses fall into the drip irrigation category. A soaker hose will not spray water regardless of its orientation.

*Spa and/or Hot-Tub*--a structure that is intended to be filled with water that circulates through an on-site filtration system and is not intended to be drained or refilled after each use.

*Spray Irrigate or Spray Irrigation* -- a category of irrigation method that utilizes devices that spray water away from the device orifice(s). These include, but are not limited to, pop-up sprays, rotors, oscillating sprinklers, and impact sprinklers. A hand held hose is not Spray Irrigation.

*Vehicle* – A motor vehicle, car, truck, motorcycle, bicycle, boat, trailer, or other conveyance.

**Sec. 106-186. Water shortage; authority of department.**

(a) *Water conservation restrictions effective at all times.* It shall be unlawful for any person, firm, corporation or other entity, at any time of the year, to:

- (1) run outside spray-type irrigation on any day of the week between 11:00 a.m. and 6:00 p.m. unless one is using a hand-held hose, soaker hose, bucket, watering can, bubbler or drip irrigation system,
- (2) wash a vehicle at any location other than a commercial car wash, car dealership, detail shop or automotive shop unless the hose is equipped with a nozzle that stops the flow of water through the hose when released by the operator, or
- (3) provide drinking water to customers of restaurants, bars, or clubs unless the customer requests such water.

(b) Discretionary drought restrictions. The Director of Public Works may declare any stage of drought restrictions described in this ordinance to be effective if:

- (1) the system demand exceeds 90% design treatment capacity for three or more consecutive days,
- (2) the water supply system is unable to deliver water due to mechanical failure or damage of major water system components which are expected to require more than 72 hours to repair, or
- (3) the water system is contaminated either accidentally or intentionally, or the water system fails from acts of nature or man.

(3) *Near 50 Percent Capacity.* When the levels near a combined capacity of 50 percent, the city shall mail a copy of the Water Rationing Zone Map, with a cover letter describing the drought conditions, to each water account. Failure to mail or receive such warning shall not be a defense to any crime, restriction, or charge established in this division.

(d) *Stage 2 - Drought Warning.*

- (1) The Director of Public Works shall declare a Stage 2 Drought Warning when levels of Lakes Arrowhead and Kickapoo reach a combined capacity of 50 percent.
- (2) The following actions shall occur under the direction of the Director of Public Works, with the goal of reducing the amount of water being used by 15%:
  - a. Form a Drought Emergency Task Force for guidance through the remainder of the drought and to interface with the public.
  - b. Suspend all non-essential operational use of water by City of Wichita Falls, such as flushing water mains, street sweeping, water jet cleaning of sanitary sewer mains, fire fighter training, etc.), except where such use of water is critical to the health and safety of the citizens.
  - c. Parks Department will reduce watering to once per week or only enough water to support their trees, whichever is less.
  - d. Notify all wholesale customers of the situation and inform them of the reduction goals for their systems in accordance with their individual contracts with the City of Wichita Falls. Pro rata curtailment by wholesale customers will be based upon their contractual limits as provided in Texas Water Code § 11.039.

(3) In Stage 2 drought, the following restrictions shall apply:

- a. Irrigation:
  - i. It shall be unlawful to run outside irrigation systems (including sprinklers, automatic sprinkler systems and unattended hoses) except on the day of the week permitted for the area as identified on the Water Rationing Zone Map. An official copy of the Water Rationing Zone Map shall be kept on file in the office of the City Clerk.
  - ii. It shall be unlawful to utilize spray irrigation between the hours of 11:00 a.m. and 6:00 p.m.

subject to the prohibition of spray irrigation during the daylight hours between 11a.m. & 6 p.m..

All other Golf Course Features: It shall be unlawful for golf courses to Spray Irrigate any other landscape features, such as roughs, trees, shrubs, etc.

- vii. Nursery plant stock is exempt from the irrigation and landscape watering restrictions of this subsection.

b. Carwashing:

- i. It shall be unlawful to wash a vehicle at any location other than a commercial car wash, car dealership, detail shop or automotive shop.
  - ii. The washing of a vehicle for health and safety reasons, sufficient to remove the hazard, is permitted any time.
  - iii. Washing a vehicle with a bucket, on the day to water or on the lawn while watering, other than at a commercial car wash, car dealership, detail shop or automotive shop, is prohibited.
  - iv. Fundraising car washes are prohibited.
- c. Restaurants / Bars / Clubs / School Cafeterias. It shall be unlawful to provide drinking water to customers of restaurants, bars, or clubs unless the customer requests such water.
- d. Washing sidewalks, driveways, or concrete slabs: It shall be unlawful to wash sidewalks, driveways, or concrete slabs unless an immediate health or safety risk is present.

(5) During a Stage 2 Drought Warning, the following surcharges will be applied to all applicable accounts:

a. For Residential Water Meters;

\$0.50 per hundred cubic feet (CCF) between 10 CCF and 20 CCF,  
\$1.00 per CCF between 20 CCF and 40 CCF, and  
\$2.00 per CCF over 40 CCF.

b. For Irrigation Water Meters;

\$0.50 per CCF between 0 CCF and 10 CCF,  
\$1.00 per CCF between 10 CCF and 20 CCF,  
\$2.00 per CCF between 20 CCF and 40 CCF, and  
\$4.00 for each CCF over 40 CCF.

Greens: Golf Courses may utilize Spray Irrigation on greens at any time for the purpose of cooling golf course greens when warranted by weather conditions and only with run cycles of less than 5 minutes every 60 minutes. Golf course greens are exempt from the Spray Irrigation times, and greens may be Spray Irrigated any day of the week, but will continue to be subject to the prohibition of spray irrigation during the daylight hours between 11a.m. and 6 p.m..

Tee Boxes: It shall be unlawful for golf courses to Spray Irrigate Tee-Boxes, except on the day of the week permitted for the area as identified on the Water Rationing Zone map, but will continue to be subject to the prohibition of spray irrigation during the daylight hours between 11a.m. and 6 p.m.

Fairways: It shall be unlawful for golf courses to Spray Irrigate Fairways.

All other Golf Course Features: It shall be unlawful for golf courses to Spray Irrigate any other landscape features, such as roughs, trees, shrubs, etc.

- v. Nursery Plant Stock is exempt from the irrigation and landscape watering restrictions of this subsection.
- b. Car washes / Detail Shops:
- i. It shall be unlawful to wash a vehicle at any location other than a commercial car wash, car dealership, detail shop or automotive shop.
  - ii. The washing of a vehicle for health and safety reasons, sufficient to remove the hazard, is permitted any time.
  - iii. Washing a vehicle with a bucket, on the day to water or on the lawn while watering, other than at a commercial car wash, car dealership, detail shop or automotive shop, is prohibited.
  - iv. Fundraising car washes are prohibited.
  - v. All self-serve and full-service carwashes and detail shops will be required to close the car washing portion of their business on one day each week. The scheduled day of closure shall coincide with the day that car wash is allowed to irrigate, in accordance with the Water Rationing Zone map.

- ii. If repairing a pool, it shall only be drained to a level necessary to affect the repair, and no further. Owners of pools that follow this restriction will be allowed to re-fill their pool after the repair.
  - iii. Owners Operators of pools that are restricted from draining the pool once it closed for the season.
  - f. Washing sidewalks, driveways, or concrete slabs: It shall be unlawful to wash sidewalks, driveways, or concrete slabs unless an immediate health or safety risk is present.
- (4) During a Stage 3 Drought Emergency, the following surcharges will be applied to all applicable accounts:
- a. For Residential Water Meters;  
\$1.00 per CCF between 10 CCF and 20 CCF,  
\$2.00 per CCF between 20 CCF and 40 CCF, and  
\$4.00 per CCF over 40 CCF.
  - b. For Irrigation Water Meters;  
\$1.00 per CCF between 0 CCF and 10 CCF,  
\$2.00 per CCF between 10 CCF and 20 CCF,  
\$4.00 per CCF between 20 CCF and 40 CCF, and  
\$8.00 per CCF over 40 CCF.

*(f) Stage 4 - Drought Disaster*

- (1) The Director of Public Works shall declare a Stage 4 Drought Disaster when the levels of Lakes Arrowhead and Kickapoo reach a combined capacity of 30 percent.
- (2) The following actions shall occur under the direction of the Director of Public Works, with the goal of reducing the amount of potable water being provided by the City to less than 17 MGD:
  - a. Impose further mandatory restrictions on non-essential uses of water and essential uses of water.
  - b. Pull Hydrant Meters and suspend service thereon until conditions return to a Drought Emergency status.
  - c. Continue the aggressive public relations and education program.
- (3) In Stage 4 drought, the following restrictions shall apply:
  - a. Irrigation:

- i. It shall be unlawful for a car dealer or an entity that maintains a fleet of vehicles to wash its inventory of cars on any day other than the day the property was authorized to Spray Irrigate in accordance with the Water Rationing Zone Map.
  - ii. The washing of any vehicle in a fleet may take place only at a commercial car wash or at a location owned by the fleet's owner and that is used solely for commercial uses.
  - iii. Fleets may not be washed at any location used for residential purposes.
  - iv. It is an affirmative defense to prosecution that if a car dealer or car rental is preparing a car for pickup, it washed that vehicle (and only that vehicle) on the day of pick up by the customer. Otherwise, all vehicles are subject to (f)(3)c. above.
- d. Restaurants / Bars / Clubs / School Cafeterias:
- i. It shall be unlawful to provide drinking water to customers of restaurants, bars, or clubs unless the customer requests such water.
  - ii. It shall be unlawful for a food establishment to thaw food with water. Food must be thawed by another legal method, such as Refrigeration or Cooking Process.
  - iii. It shall be unlawful for a food establishment to clean kitchen or food handling areas with spray hoses.
- e. Pools:
- i. It shall be unlawful to operate a water feature on a Residential Pool, including, but not limited to, fountains, waterfalls, descents, arcs, and slides.
  - ii. If repairing a pool, it shall only be drained to a level necessary to affect the repair, and no further. Owners of pools that follow this restriction will be allowed to re-fill their pool after the repair.
  - iii. Owners / Operators of pools are restricted from draining the pool once it closed for the season.
- f. Large Industries
- i. Large Industries will be notified by the City to initiate a Water Audit of their facilities.

(2) The following actions shall occur under the direction of the Director of Public Works, with the goal of reducing the amount of potable water being provided by the City to less than 14 MGD:

- a. Impose further mandatory restrictions on non-essential uses of water and essential uses of water.
- b. Continue the aggressive public relations and education program.

(3) In Stage 5 drought, the following restrictions shall apply:

a. Irrigation:

i. *Irrigation Prohibited.* It shall be unlawful to utilize any type of irrigation using potable water produced by the City of Wichita Falls that is distributed through the City's distribution system on any day at any time. This restriction includes all forms of irrigation, including, spray, bubbler, drip, hand-watering, etc.

ii. *Public and Private Golf Courses.* It shall be unlawful to irrigate any and all vegetated landscape areas on the golf course including greens, tee boxes, fairways, roughs, trees, shrubs, etc. The Golf Courses will be allowed to utilize the remaining water within their pond system, as they see fit; but, will not be allowed to refill the ponds from the City system, while in a Stage 5 Drought Disaster.

iii. *Nursery Plant Stock.* Nursery Plant Stock is exempt from the irrigation and landscape watering restrictions of this subsection.

b. Washing Cars when Lakes Arrowhead & Kickapoo are between 20% and 25%:

i. *Location of Washing Cars Limited to Reduce Runoff.* It shall be unlawful for any person to wash a vehicle at any location other than a commercial car wash, car dealership, detail shop, automotive shop, or commercial property that is owned by the owner of a Fleet of vehicles.

a. It shall be an affirmative defense to prosecution pursuant to this subsection i. that a person was washing a vehicle for health and safety reasons, only to an extent sufficient to remove the hazard, is permitted any time.

b. It shall be an affirmative defense to prosecution pursuant to this subsection i. that a car dealer or car rental company was preparing a vehicle for pickup and washed that vehicle on the day of pick up by the customer.

b. Foundations may only be watered with Soaker Hoses.

ii. It shall be unlawful to wash sidewalks, driveways, concrete slabs, any structure or any part of a structure.

(4) During a Stage 5 Drought Catastrophe the following surcharges will be applied to all applicable accounts:

- a. For Residential Water Meters;  
\$6.00 per CCF between 10 CCF and 20 CCF,  
\$12.00 per CCF between 20 CCF and 40 CCF, and  
\$24.00 per CCF over 40 CCF.
- b. For Irrigation Water Meters;  
\$6.00 per CCF between 0 CCF and 10 CCF,  
\$12.00 per CCF between 10 CCF and 20 CCF,  
\$24.00 per CCF between 20 CCF and 40 CCF, and  
\$48.00 per CCF over 40 CCF.

(h) Surcharges will remain in effect until the City Council announces the end to the restrictions. Water utilized by commercial nurseries for plant stock production shall not be subject to the surcharges specified herein.

(i) *Triggering & Terminating Drought Stages.*

(1) The Director of Public Works shall declare that each "trigger level" has been reached and that the water use restrictions for each respective stage are in effect. The water restrictions will remain in effect until the lakes rise to a level that, when combined with the long-term forecast, assures the city an adequate supply of water.

(2) When an adequate supply of water is available, the City Council, by majority vote, and after consultation with the Director of Public Works, shall announce the termination of each respective stage of the restrictions that are triggered by lake levels.

(j) *Drought Restrictions only apply to City-supplied Water.* Water supplied from sources other than the City's potable water delivery system, including private water wells, aerobic septic systems, wastewater effluent, and potable water imported from other areas, is intended to be exempt from the restrictions of this section. Accordingly, it shall be an affirmative defense to prosecution for violation of any provision of this section that the water used in the alleged violation was not from the City's potable water delivery system.

(k) *Violation; penalty.* Any person, firm, corporation or other entity found in violation of any provision of this section shall be punished by a fine of \$25.00 for the first offense; not more than \$500.00 for the second offense; and not more than \$2,000.00 for each

**ORDINANCE NUMBER 854**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING APPENDIX J OF THE WATER CONSERVATION PLAN; ESTABLISHING CRITERIA FOR THE DROUGHT CONTINGENCY PLAN; PROVIDING PENALTIES, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Burkburnett, Texas recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and

**WHEREAS**, the City recognizes that natural limitations due to drought conditions and other acts of God cannot guarantee an uninterrupted water supply for all purposes; and

**WHEREAS**, the City has determined that the Water Conservation Plan should be amended to provide additional measures of water conservation to create reduction in water use; and

**WHEREAS**, as authorized under law, and in the best interest of the citizens of Burkburnett, Texas the Board of Commissioners deems it expedient and necessary to establish certain polices for the orderly and efficient management of limited water supplies.

**NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:**

**SECTION 1.** That Appendix J - Drought Contingency Plan, of the City of Burkburnett, Texas, Water Conservation Plan be amended to read:

**Section I: Declaration of Policy, Purpose, and Intent**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Burkburnett hereby adopts the following regulations and restrictions on the delivery and consumption of water through an ordinance/or resolution.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

The content of this report is based on Texas Commission on Environmental Quality (TCEQ) rules, minimum requirements, and suggestions for developing of a Drought

Contingency Plan. These rules, requirements, and suggestions are contained in Title 30 Texas Administrative Code (TAC), Subchapter B, Rule §288.2 and the TCEQ Handbook on Drought Contingency Planning for Retail Public Water Suppliers (RG-424, April 2005). A copy of Rule §288.2 is attached to this report.

**Section II: Public Involvement**

Opportunity for the public to provide input into the preparation of the Plan was provided by the City of Burkburnett by the customary process of passing the ordinance to adopt this Plan. The public is invited to comment at the council meetings. Written notice of this agenda item is posted prior to each meeting.

**Section III: Public Education**

The City of Burkburnett will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by inserts in water bills, by publication in the local weekly newspaper, and by making the plan available on the City of Burkburnett official website ([www.burkburnet.org](http://www.burkburnet.org)).

**Section IV: Coordination with Regional Water Planning Groups**

The service area of the City of Burkburnett is located in Wichita County. Wichita County is located in the Region B Water Planning Group. A copy of the Plan has been provided to the Texas Water Planning Area Region B for approval.

**Section V: Authorization**

The City Manager or his/her designee, with consent of the Board of Commissioners, is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager or his/her designee, with consent of the Board of Commissioners, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

**Section VI: Application**

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City of Burkburnett. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

**Section VII: Definitions**

For the purposes of this Plan, the following definitions shall apply:

Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: any person, company, or organization using water supplied by City of Burkburnett.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Hand watering: Watering trees, flower beds, plants and gardens only with a handheld hose, soaker hose, bucket (5 gallons or less), watering can, or drip irrigation system.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

- (a) irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this Plan;
- (b) use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (g) failure to repair a controllable leak(s) within a reasonable period after having been

given notice directing the repair of such leak(s); and

(h) use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

### **Section VIII: Criteria for Initiation and Termination of Drought Response Stages**

The City Manager or his/her designee shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the Plan, that is, when the specified “triggers” are reached.

The triggering criteria described below are based on an increase in demand and reduction in the water supply. After examining the average daily demands during maximum-use months for the last five years, demand-related triggers were developed based on the average daily demand (2.1 MG) during the maximum-use month (July 2007) extended over a period of ten days (21 MG). Supply-related triggers were developed from water-supply contracts with the City of Wichita Falls which sells water to the City of Burkburnett at a maximum rate of 4 MGD.

#### **Stage 1 Triggers -- MILD Water Shortage Conditions**

Requirements for initiation and termination: Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses, defined in Section VII–Definitions, annually beginning on May 1 through September 30.

#### **Stage 2 Triggers -- MODERATE Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in Section IX of this Plan either of the following conditions exist:

- (a) The total demand equals or exceeds 21 million total gallons over a period of ten consecutive days.
- (b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 10 and 20 percent.

Requirements for termination: Stage 2 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 21 million total gallons over a period of ten consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 90 percent of preexisting quantity.

Upon termination of Stage 2, Stage 1 becomes operative.

**Stage 3 Triggers – SEVERE Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 24 million total gallons over a period of ten consecutive days after implementing Stage 2.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 20 and 30 percent.

Requirements for termination: Stage 3 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 24 million total gallons over a period of fifteen consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 80 percent of preexisting quantity.

Upon termination of Stage 3, Stage 2 becomes operative.

**Stage 4 Triggers -- CRITICAL Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 4 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 27 million total gallons over a period of ten consecutive days after implementing Stage 3.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 30 and 35 percent or the City of Wichita Falls is going to Stage 4.

Requirements for termination: Stage 4 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 27 million total gallons over a period of ten consecutive days.

- (b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 70 percent of preexisting quantity.

Upon termination of Stage 4, Stage 3 becomes operative.

**Stage 5 Triggers -- EMERGENCY Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions for Stage 5 of this Plan when City Manager, or his/her designee, determines that a water supply emergency exists. Conditions that may result in a water supply emergency may include the following:

- (a) Total water demand equals or exceeds 30 million total gallons over a period of ten consecutive days after implementing Stage 4;
- (b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by 35 percent or more;
- (c) Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or
- (d) Natural or man-made contamination of the water supply source(s).

Requirements for termination: Stage 5 of the Plan may be rescinded when all of the following applicable conditions have been met:

- (a) Total water demand is less than 30 million total gallons over a period of ten consecutive days.
- (b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 65 percent of preexisting quantity.
- (c) Repairs have been made and water service restored.
- (d) Contamination of the water supply source has been corrected and water service restored.

When Stage 5 conditions were a result of either (a) or (b) above, Stage 4 becomes operative upon termination of Stage 5. When Stage 5 conditions were a result of either (c) or (d) above, water supply operation may return to pre-existing conditions upon termination of Stage 5.

**Stage 6 Triggers -- WATER ALLOCATION**

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water as prescribed in Section IX of this

Plan. Customers shall be required to comply with the water allocation plan and comply with the requirements and restrictions for Stage 6 of this Plan.

**Section IX: Drought Response Stages**

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in Section VIII of this Plan, shall determine that a mild, moderate, severe, critical, emergency or water shortage condition exists and shall implement the following notification procedures:

**Notification**

Notification of the Public: The City Manager or his/her designee shall notify the public by means of:

- (a) publication of notice in the local weekly newspaper;
- (b) inserts in water bills;
- (c) notifications by direct mail to customers; or
- (d) by any combination of these actions.

Additional Notification: The City Manager or his/her designee shall notify directly, or cause to be notified directly, only as appropriate to respective drought stages, the following individuals and entities:

- (a) Mayor / members of the City Council
- (b) Fire Chief
- (c) County Judge and Commissioners
- (d) TCEQ (required when mandatory restrictions are imposed)
- (e) Major water users
- (f) Critical water users (hospitals, etc)
- (g) Parks / street superintendents and public facilities managers

**Stage 1 Response -- MILD Water Shortage Conditions**

Target: Achieve a voluntary 5 percent reduction in total water use and raise public awareness.

Voluntary Water Use Restrictions for Reducing Demand:

(a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of midnight and 10:00 a.m. and 8:00 p.m. to midnight on designated watering days.

(b) All operations of the City of Burburnett shall adhere to water use restrictions prescribed for Stage 2 of the Plan.

(c) Water customers are requested to practice water conservation by checking for leaks, dripping faucets, and running toilets and by utilizing water conservation kits such as displacement bags, low-flow shower heads, and leak detector tablets, and to minimize or discontinue water use for non-essential purposes.

### **Stage 2 Response -- MODERATE Water Shortage Conditions**

Target: Achieve a 15 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rises. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

(c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight.

(d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

(e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the City of Burkburnett.

(f) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the City of Burkburnett, the facility shall not be subject to these regulations.

(g) All restaurants are prohibited from serving water to patrons except upon request of the patron.

(h) The following uses of water are defined as non-essential and are prohibited:

1. wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
2. use of water to wash down buildings or structures for purposes other than immediate fire protection;
3. use of water for dust control;
4. flushing gutters or permitting water to run or accumulate in any gutter or street; and
5. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

### **Stage 3 Response -- SEVERE Water Shortage Conditions**

Target: Achieve a 35 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: All requirements of Stage 2 shall remain in effect during Stage 3 except:

- a) Irrigation of landscaped areas shall be limited to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9) between the hours of and between 8 pm and 12:00 midnight and shall only be by means of hand-held hoses, hand-held buckets, drip irrigation, hose-end sprinklers

with automatic timers, or permanently installed automatic sprinkler systems. The use of hose-end sprinklers without automatic timers is prohibited at all times.

- b) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 3. The surcharges will include:

**Residential Meters**

\$1.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons  
\$2.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons  
\$3.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons  
\$4.00 per 1,000 gallons for usage over 25,001 gallons

**Irrigation Meters**

\$1.00 per 1,000 gallons for usage between 10,001 and 15,000 gallons  
\$2.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons  
\$4.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons  
\$8.00 per 1,000 gallons for usage over 25,000 gallons

- c) The watering of golf course greens, tees, and fairways is prohibited unless the golf course utilizes a water source other than that provided by the City of Burkburnett or treated effluent water.
- d) The use of potable water for construction purposes from designated fire hydrants under special permit is to be discontinued.
- e) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- f) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the immediate premises of a commercial car wash or commercial service station and not in the immediate interest of public health, safety, and welfare is prohibited
- g) Commercial car washes shall only operate 18 hours a day.

**Stage 4 Response -- CRITICAL Water Shortage Conditions**

Target: Achieve a 45 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

- (a) It shall be unlawful to utilize any type of irrigation on any day at any time. This restriction includes all forms of irrigation, including spray bubbler, drip, hand-watering, etc. The City of Burkburnett will shut off all irrigation meters.

(b) The watering of Home Foundations is restricted to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9) between the hours of and between 8 pm and 12:00 midnight.

i. Foundations may only be watered with Soaker Hoses.

(c) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited.

(d) Residential pools shall only drained when necessary to make repairs. The pool level shall only be lowered to the level necessary to make the repairs and may be refilled. Pools may be refilled due to evaporation loss. All water features (waterfalls, sprays, slides, etc.) for residential pools shall be prohibited.

(e) Commercial car washes shall only operate 8 hours a day, 6 days a week, between the hours of 1:00 p.m. and 9:00 p.m.

(f) The use of water for washing sidewalks, walkways, driveways, parking areas, streets, tennis courts, patios, or other hard-surfaced area, except to allow to alleviate immediate health or fire hazards is prohibited.

(g) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 4. The surcharges will include:

**Residential Meters**

\$3.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons

\$6.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons

\$9.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons

\$12.00 per 1,000 gallons for usage over 25,001 gallons

**Stage 5 Response -- EMERGENCY Water Shortage Conditions**

Target: Achieve a 50 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2, 3 and 4 shall remain in effect during Stage 5 except:

(a) It shall be unlawful to utilize any type of irrigation on any day at any time. This restriction includes all forms of irrigation, including spray bubbler, drip, hand-watering, etc. The City of Burkburnett will shut off all irrigation meters.

(b) The watering of Home Foundations is restricted to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9)

between the hours of and between 8 pm and 12:00 midnight.

i. Foundations may only be watered with Soaker Hoses.

(c) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited.

(d) It shall be prohibited to fill, refill or add potable water to any residential pool. All water features (waterfalls, sprays, slides, etc.) for residential pools shall be prohibited.

(e) Commercial car washes shall only operate 8 hours a day, 6 days a week, between the hours of 10:00a.m. And 6:00p.m.

(f) It shall be an affirmative defense that a car dealer or car rental company was preparing a vehicle for pickup and washed that vehicle on the day of pick up by the customer.

(g) The use of water for washing sidewalks, walkways, driveways, parking areas, streets, tennis courts, patios, or other hard-surfaced area, except to allow to alleviate immediate health or fire hazards is prohibited.

(h) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 4. The surcharges will include:

**Residential Meters**

\$6.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons

\$9.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons

\$12.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons

\$15.00 per 1,000 gallons for usage over 25,001 gallons

**Stage 6 Response -- WATER ALLOCATION**

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water according to the following water allocation plan:

Single-Family Residential Customers: The allocation to residential water customers residing in a single-family dwelling shall be as follows:

<u>Persons per Household</u>	<u>Gallons per Month</u>
1 or 2	6,000
3 or 4	7,000
5 or 6	8,000

7 or 8	9,000
9 or 10	10,000
11 or more	12,000

“Household” means the residential premises served by the customer’s meter.

“Persons per household” includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period. It shall be assumed that a particular customer’s household is comprised of two (2) persons unless the customer notifies the City of Burkburnett of a greater number of persons per household on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) persons per household. New customers may claim more persons per household at the time of applying for water service on the form prescribed by the City Manager. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the City of Burkburnett on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) persons per household, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of persons in a household or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined I accordance with the enforcement measures described in Section X Enforcement.

Residential water customers shall pay the following surcharges:

- \$5.00 for the first 1,000 gallons over allocation.
- \$6.00 for the second 1,000 gallons over allocation.
- \$7.00 for the third 1,000 gallons over allocation.
- \$8.00 for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Master-Metered Multi-Family Residential Customers: The allocation to a customer billed from a master meter which jointly measures water to multiple permanent residential dwelling units (example: apartments, mobile homes) shall be allocated 6,000 gallons per month for each dwelling unit. It shall be assumed that such a customer’s meter serves two dwelling units unless the customer notifies the City of Burkburnett of a greater number on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every such customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) dwellings. A dwelling unit may be claimed under this

provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the City Manager. If the number of dwelling units served by a master meter is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) dwelling units, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of dwelling units served by a master meter or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined in accordance with the enforcement measures described in Section X Enforcement. Customers billed from a master meter under this provision shall pay the following monthly surcharges:

\$5.00 for 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.

\$6.00 thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.

\$7.00 thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.

\$8.00 thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Commercial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes. The non-residential customer's allocation shall be approximately 75 percent of the customer's usage for corresponding month's billing period for the previous 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists. Provided, however, a customer, 75 percent of whose monthly usage is less than 6,000 gallons, shall be allocated 5,000 gallons. The City Manager shall give his/her best effort to see that notice of each non-residential customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Burkburnett to determine the allocation. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the customer's normal water usage, (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Nonresidential commercial customers shall pay the following surcharges:

\$5.00 per thousand gallons for the first 1,000 gallons over allocation.

\$6.00 per thousand gallons for the second 1,000 gallons over allocation.

\$7.00 per thousand gallons for the third 1,000 gallons over allocation.

\$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the

customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

Industrial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each industrial customer, which uses water for processing purposes. The industrial customer's allocation shall be approximately 90 percent of the customer's water usage baseline. Ninety (90) days after the initial imposition of the allocation for industrial customers, the industrial customer's allocation shall be further reduced to 85 percent of the customer's water usage baseline. The industrial customer's water use baseline will be computed on the average water use for the 3-month period ending prior to the date of implementation of Stage 2 of the Plan. If the industrial water customer's billing history is shorter than 3 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists. The City Manager shall give his/her best effort to see that notice of each industrial customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Burburnett to determine the allocation, and the allocation shall be fully effective notwithstanding the lack of receipt of written notice. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased, (1) if the designated period does not accurately reflect the customer's normal water use because the customer had shutdown a major processing unit for repair or overhaul during the period, (2) the customer has added or is in the process of adding significant additional processing capacity, (3) the customer has shutdown or significantly reduced the production of a major processing unit, (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce water use is limited, (5) the customer agrees to transfer part of its allocation to another industrial customer, or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Industrial customers shall pay the following surcharges:

\$5.00 per thousand gallons for the first 1,000 gallons over allocation.

\$6.00 per thousand gallons for the second 1,000 gallons over allocation.

\$7.00 per thousand gallons for the third 1,000 gallons over allocation.

\$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

#### **Section X: Enforcement**

(a) No person shall knowingly or intentionally allow the use of water from the City of Burburnett for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by City Manager, or his/her designee, in accordance with provisions of this Plan.

(b) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) and not more than one thousand dollars (\$1000). Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at twenty- five dollars \$25, and any other costs incurred by the City of Burkburnett in discontinuing service. A zero tolerance policy is in effect. In addition, suitable assurance must be given to the City Manager that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.

(c) Any person, including a person classified as a water customer of the City of Burkburnett, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

(d) Any employee of the City of Burkburnett, police officer, or other employee designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for which the date shall not be less than 3 days nor more than 5 days from the date the citation was issued. The alleged violator shall be served a copy

of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

**Section XI: Variances**

The City Manager, or his/her designee, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (a) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City of Burkburnett within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager, or his/her designee, and shall include the following:

- (a) ) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) ) Specific provision(s) of the Plan from which the petitioner is requesting relief.
- (d) Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
- (e) ) Description of the relief requested.
- (f) ) Period of time for which the variance is sought.
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- (h) Other pertinent information.

**Section XII: Severability**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan.

**SECTION 2.** That all ordinances that are in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION 4.** This ordinance shall be in full force and effect immediately upon passage and publication.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and the public notice of the time, place and purpose of said meeting was given as required by law.

**SECTION 6. Emergency**

The immediate need for implementation of this ordinance due to the current drought conditions that affects the public health and safety of the citizens of the City and its surrounding area creates an emergency therefore requiring the action in the ordinance to become effective immediately and suspends the posting requirements set forth in Article IV, Section 18 (c) of the City Charter.

**PASSED AND APPROVED** on this 19<sup>th</sup> day of May 2014.

\_\_\_\_\_  
Carl Law, Mayor

**ATTEST:**

\_\_\_\_\_  
Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley

**Date:** May 19, 2014

**Item:** Ordinance Number 854 Amendment: Stage 5 Drought Restrictions

### Background

N/A

### Fiscal Impact

N/A

### Options

- Approve Ordinance Number 854 Amendment
- Do nothing at this time

### Staff Recommendation

Staff recommends approving Ordinance Number 854 Amendment as presented

### Attachments

Copy of Ordinance Number 854

**ORDINANCE NUMBER 854**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING APPENDIX J OF THE WATER CONSERVATION PLAN; ESTABLISHING CRITERIA FOR THE DROUGHT CONTINGENCY PLAN; PROVIDING PENALTIES, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Burkburnett, Texas recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and

**WHEREAS**, the City recognizes that natural limitations due to drought conditions and other acts of God cannot guarantee an uninterrupted water supply for all purposes; and

**WHEREAS**, the City has determined that the Water Conservation Plan should be amended to provide additional measures of water conservation to create reduction in water use; and

**WHEREAS**, as authorized under law, and in the best interest of the citizens of Burkburnett, Texas the Board of Commissioners deems it expedient and necessary to establish certain polices for the orderly and efficient management of limited water supplies.

**NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:**

**SECTION 1.** That Appendix J - Drought Contingency Plan, of the City of Burkburnett, Texas, Water Conservation Plan be amended to read:

**Section I: Declaration of Policy, Purpose, and Intent**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Burkburnett hereby adopts the following regulations and restrictions on the delivery and consumption of water through an ordinance/or resolution.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

The content of this report is based on Texas Commission on Environmental Quality (TCEQ) rules, minimum requirements, and suggestions for developing of a Drought

Contingency Plan. These rules, requirements, and suggestions are contained in Title 30 Texas Administrative Code (TAC), Subchapter B, Rule §288.2 and the TCEQ Handbook on Drought Contingency Planning for Retail Public Water Suppliers (RG-424, April 2005). A copy of Rule §288.2 is attached to this report.

**Section II: Public Involvement**

Opportunity for the public to provide input into the preparation of the Plan was provided by the City of Burkburnett by the customary process of passing the ordinance to adopt this Plan. The public is invited to comment at the council meetings. Written notice of this agenda item is posted prior to each meeting.

**Section III: Public Education**

The City of Burkburnett will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by inserts in water bills, by publication in the local weekly newspaper, and by making the plan available on the City of Burkburnett official website ([www.burkburnet.org](http://www.burkburnet.org)).

**Section IV: Coordination with Regional Water Planning Groups**

The service area of the City of Burkburnett is located in Wichita County. Wichita County is located in the Region B Water Planning Group. A copy of the Plan has been provided to the Texas Water Planning Area Region B for approval.

**Section V: Authorization**

The City Manager or his/her designee, with consent of the Board of Commissioners, is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager or his/her designee, with consent of the Board of Commissioners, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

**Section VI: Application**

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City of Burkburnett. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

**Section VII: Definitions**

For the purposes of this Plan, the following definitions shall apply:

Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: any person, company, or organization using water supplied by City of Burkburnett.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Hand watering: Watering trees, flower beds, plants and gardens only with a handheld hose, soaker hose, bucket (5 gallons or less), watering can, or drip irrigation system.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

- (a) irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this Plan;
- (b) use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (g) failure to repair a controllable leak(s) within a reasonable period after having been

given notice directing the repair of such leak(s); and

(h) use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

### **Section VIII: Criteria for Initiation and Termination of Drought Response Stages**

The City Manager or his/her designee shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the Plan, that is, when the specified “triggers” are reached.

The triggering criteria described below are based on an increase in demand and reduction in the water supply. After examining the average daily demands during maximum-use months for the last five years, demand-related triggers were developed based on the average daily demand (2.1 MG) during the maximum-use month (July 2007) extended over a period of ten days (21 MG). Supply-related triggers were developed from water-supply contracts with the City of Wichita Falls which sells water to the City of Burkburnett at a maximum rate of 4 MGD.

#### **Stage 1 Triggers -- MILD Water Shortage Conditions**

Requirements for initiation and termination: Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses, defined in Section VII–Definitions, annually beginning on May 1 through September 30.

#### **Stage 2 Triggers -- MODERATE Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in Section IX of this Plan either of the following conditions exist:

- (a) The total demand equals or exceeds 21 million total gallons over a period of ten consecutive days.
- (b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 10 and 20 percent.

Requirements for termination: Stage 2 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 21 million total gallons over a period of ten consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 90 percent of preexisting quantity.

Upon termination of Stage 2, Stage 1 becomes operative.

**Stage 3 Triggers – SEVERE Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 24 million total gallons over a period of ten consecutive days after implementing Stage 2.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 20 and 30 percent.

Requirements for termination: Stage 3 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 24 million total gallons over a period of fifteen consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 80 percent of preexisting quantity.

Upon termination of Stage 3, Stage 2 becomes operative.

**Stage 4 Triggers -- CRITICAL Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 4 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 27 million total gallons over a period of ten consecutive days after implementing Stage 3.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 30 and 35 percent or the City of Wichita Falls is going to Stage 4.

Requirements for termination: Stage 4 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 27 million total gallons over a period of ten consecutive days.

- (b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 70 percent of preexisting quantity.

Upon termination of Stage 4, Stage 3 becomes operative.

**Stage 5 Triggers -- EMERGENCY Water Shortage Conditions**

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions for Stage 5 of this Plan when City Manager, or his/her designee, determines that a water supply emergency exists. Conditions that may result in a water supply emergency may include the following:

- (a) Total water demand equals or exceeds 30 million total gallons over a period of ten consecutive days after implementing Stage 4;
- (b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by 35 percent or more;
- (c) Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or
- (d) Natural or man-made contamination of the water supply source(s).

Requirements for termination: Stage 5 of the Plan may be rescinded when all of the following applicable conditions have been met:

- (a) Total water demand is less than 30 million total gallons over a period of ten consecutive days.
- (b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 65 percent of preexisting quantity.
- (c) Repairs have been made and water service restored.
- (d) Contamination of the water supply source has been corrected and water service restored.

When Stage 5 conditions were a result of either (a) or (b) above, Stage 4 becomes operative upon termination of Stage 5. When Stage 5 conditions were a result of either (c) or (d) above, water supply operation may return to pre-existing conditions upon termination of Stage 5.

**Stage 6 Triggers -- WATER ALLOCATION**

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water as prescribed in Section IX of this

Plan. Customers shall be required to comply with the water allocation plan and comply with the requirements and restrictions for Stage 6 of this Plan.

**Section IX: Drought Response Stages**

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in Section VIII of this Plan, shall determine that a mild, moderate, severe, critical, emergency or water shortage condition exists and shall implement the following notification procedures:

**Notification**

Notification of the Public: The City Manager or his/her designee shall notify the public by means of:

- (a) publication of notice in the local weekly newspaper;
- (b) inserts in water bills;
- (c) notifications by direct mail to customers; or
- (d) by any combination of these actions.

Additional Notification: The City Manager or his/her designee shall notify directly, or cause to be notified directly, only as appropriate to respective drought stages, the following individuals and entities:

- (a) Mayor / members of the City Council
- (b) Fire Chief
- (c) County Judge and Commissioners
- (d) TCEQ (required when mandatory restrictions are imposed)
- (e) Major water users
- (f) Critical water users (hospitals, etc)
- (g) Parks / street superintendents and public facilities managers

**Stage 1 Response -- MILD Water Shortage Conditions**

Target: Achieve a voluntary 5 percent reduction in total water use and raise public awareness.

Voluntary Water Use Restrictions for Reducing Demand:

(a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of midnight and 10:00 a.m. and 8:00 p.m. to midnight on designated watering days.

(b) All operations of the City of Burburnett shall adhere to water use restrictions prescribed for Stage 2 of the Plan.

(c) Water customers are requested to practice water conservation by checking for leaks, dripping faucets, and running toilets and by utilizing water conservation kits such as displacement bags, low-flow shower heads, and leak detector tablets, and to minimize or discontinue water use for non-essential purposes.

### **Stage 2 Response -- MODERATE Water Shortage Conditions**

Target: Achieve a 15 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rises. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

(c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight.

(d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

(e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the City of Burkburnett.

(f) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the City of Burkburnett, the facility shall not be subject to these regulations.

(g) All restaurants are prohibited from serving water to patrons except upon request of the patron.

(h) The following uses of water are defined as non-essential and are prohibited:

1. wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
2. use of water to wash down buildings or structures for purposes other than immediate fire protection;
3. use of water for dust control;
4. flushing gutters or permitting water to run or accumulate in any gutter or street; and
5. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

### **Stage 3 Response -- SEVERE Water Shortage Conditions**

Target: Achieve a 35 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: All requirements of Stage 2 shall remain in effect during Stage 3 except:

- a) Irrigation of landscaped areas shall be limited to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9) between the hours of and between 8 pm and 12:00 midnight and shall only be by means of hand-held hoses, hand-held buckets, drip irrigation, hose-end sprinklers

with automatic timers, or permanently installed automatic sprinkler systems. The use of hose-end sprinklers without automatic timers is prohibited at all times.

- b) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 3. The surcharges will include:

**Residential Meters**

\$1.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons  
\$2.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons  
\$3.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons  
\$4.00 per 1,000 gallons for usage over 25,001 gallons

**Irrigation Meters**

\$1.00 per 1,000 gallons for usage between 10,001 and 15,000 gallons  
\$2.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons  
\$4.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons  
\$8.00 per 1,000 gallons for usage over 25,000 gallons

- c) The watering of golf course greens, tees, and fairways is prohibited unless the golf course utilizes a water source other than that provided by the City of Burkburnett or treated effluent water.
- d) The use of potable water for construction purposes from designated fire hydrants under special permit is to be discontinued.
- e) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- f) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the immediate premises of a commercial car wash or commercial service station and not in the immediate interest of public health, safety, and welfare is prohibited
- g) Commercial car washes shall only operate 18 hours a day.

**Stage 4 Response -- CRITICAL Water Shortage Conditions**

Target: Achieve a 45 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

- (a) It shall be unlawful to utilize any type of irrigation on any day at any time. This restriction includes all forms of irrigation, including spray bubbler, drip, hand-watering, etc. The City of Burkburnett will shut off all irrigation meters.

(b) The watering of Home Foundations is restricted to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9) between the hours of and between 8 pm and 12:00 midnight.

i. Foundations may only be watered with Soaker Hoses.

(c) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited.

(d) Residential pools shall only drained when necessary to make repairs. The pool level shall only be lowered to the level necessary to make the repairs and may be refilled. Pools may be refilled due to evaporation loss. All water features (waterfalls, sprays, slides, etc.) for residential pools shall be prohibited.

(e) Commercial car washes shall only operate 8 hours a day, 6 days a week, between the hours of 1:00 p.m. and 9:00 p.m.

(f) The use of water for washing sidewalks, walkways, driveways, parking areas, streets, tennis courts, patios, or other hard-surfaced area, except to allow to alleviate immediate health or fire hazards is prohibited.

(g) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 4. The surcharges will include:

**Residential Meters**

\$3.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons

\$6.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons

\$9.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons

\$12.00 per 1,000 gallons for usage over 25,001 gallons

**Stage 5 Response -- EMERGENCY Water Shortage Conditions**

Target: Achieve a 50 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2, 3 and 4 shall remain in effect during Stage 5 except:

(a) It shall be unlawful to utilize any type of irrigation on any day at any time. This restriction includes all forms of irrigation, including spray bubbler, drip, hand-watering, etc. The City of Burkburnett will shut off all irrigation meters.

(b) The watering of Home Foundations is restricted to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9)

between the hours of and between 8 pm and 12:00 midnight.

i. Foundations may only be watered with Soaker Hoses.

(c) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited.

(d) It shall be prohibited to fill, refill or add potable water to any residential pool. All water features (waterfalls, sprays, slides, etc.) for residential pools shall be prohibited.

(e) Commercial car washes shall only operate 8 hours a day, 6 days a week, between the hours of 10:00a.m. And 6:00p.m.

(f) It shall be an affirmative defense that a car dealer or car rental company was preparing a vehicle for pickup and washed that vehicle on the day of pick up by the customer.

(g) The use of water for washing sidewalks, walkways, driveways, parking areas, streets, tennis courts, patios, or other hard-surfaced area, except to allow to alleviate immediate health or fire hazards is prohibited.

(h) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 4. The surcharges will include:

**Residential Meters**

\$6.00 per 1,000 gallons for usage between 10,001 gallons and 15,000 gallons

\$9.00 per 1,000 gallons for usage between 15,001 gallons and 20,000 gallons

\$12.00 per 1,000 gallons for usage between 20,001 gallons and 25,000 gallons

\$15.00 per 1,000 gallons for usage over 25,001 gallons

**Stage 6 Response -- WATER ALLOCATION**

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water according to the following water allocation plan:

Single-Family Residential Customers: The allocation to residential water customers residing in a single-family dwelling shall be as follows:

<u>Persons per Household</u>	<u>Gallons per Month</u>
1 or 2	6,000
3 or 4	7,000
5 or 6	8,000

7 or 8	9,000
9 or 10	10,000
11 or more	12,000

“Household” means the residential premises served by the customer’s meter.

“Persons per household” includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period. It shall be assumed that a particular customer’s household is comprised of two (2) persons unless the customer notifies the City of Burkburnett of a greater number of persons per household on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) persons per household. New customers may claim more persons per household at the time of applying for water service on the form prescribed by the City Manager. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the City of Burkburnett on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) persons per household, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of persons in a household or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined I accordance with the enforcement measures described in Section X Enforcement.

Residential water customers shall pay the following surcharges:

- \$5.00 for the first 1,000 gallons over allocation.
- \$6.00 for the second 1,000 gallons over allocation.
- \$7.00 for the third 1,000 gallons over allocation.
- \$8.00 for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Master-Metered Multi-Family Residential Customers: The allocation to a customer billed from a master meter which jointly measures water to multiple permanent residential dwelling units (example: apartments, mobile homes) shall be allocated 6,000 gallons per month for each dwelling unit. It shall be assumed that such a customer’s meter serves two dwelling units unless the customer notifies the City of Burkburnett of a greater number on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every such customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) dwellings. A dwelling unit may be claimed under this

provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the City Manager. If the number of dwelling units served by a master meter is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) dwelling units, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of dwelling units served by a master meter or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined in accordance with the enforcement measures described in Section X Enforcement. Customers billed from a master meter under this provision shall pay the following monthly surcharges:

\$5.00 for 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.

\$6.00 thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.

\$7.00 thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.

\$8.00 thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Commercial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes. The non-residential customer's allocation shall be approximately 75 percent of the customer's usage for corresponding month's billing period for the previous 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists. Provided, however, a customer, 75 percent of whose monthly usage is less than 6,000 gallons, shall be allocated 5,000 gallons. The City Manager shall give his/her best effort to see that notice of each non-residential customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Burkburnett to determine the allocation. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the customer's normal water usage, (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Nonresidential commercial customers shall pay the following surcharges:

\$5.00 per thousand gallons for the first 1,000 gallons over allocation.

\$6.00 per thousand gallons for the second 1,000 gallons over allocation.

\$7.00 per thousand gallons for the third 1,000 gallons over allocation.

\$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the

customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

Industrial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each industrial customer, which uses water for processing purposes. The industrial customer's allocation shall be approximately 90 percent of the customer's water usage baseline. Ninety (90) days after the initial imposition of the allocation for industrial customers, the industrial customer's allocation shall be further reduced to 85 percent of the customer's water usage baseline. The industrial customer's water use baseline will be computed on the average water use for the 3-month period ending prior to the date of implementation of Stage 2 of the Plan. If the industrial water customer's billing history is shorter than 3 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists. The City Manager shall give his/her best effort to see that notice of each industrial customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Burburnett to determine the allocation, and the allocation shall be fully effective notwithstanding the lack of receipt of written notice. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased, (1) if the designated period does not accurately reflect the customer's normal water use because the customer had shutdown a major processing unit for repair or overhaul during the period, (2) the customer has added or is in the process of adding significant additional processing capacity, (3) the customer has shutdown or significantly reduced the production of a major processing unit, (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce water use is limited, (5) the customer agrees to transfer part of its allocation to another industrial customer, or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Industrial customers shall pay the following surcharges:

\$5.00 per thousand gallons for the first 1,000 gallons over allocation.

\$6.00 per thousand gallons for the second 1,000 gallons over allocation.

\$7.00 per thousand gallons for the third 1,000 gallons over allocation.

\$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

#### **Section X: Enforcement**

(a) No person shall knowingly or intentionally allow the use of water from the City of Burburnett for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by City Manager, or his/her designee, in accordance with provisions of this Plan.

(b) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) and not more than one thousand dollars (\$1000). Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at twenty- five dollars \$25, and any other costs incurred by the City of Burkburnett in discontinuing service. A zero tolerance policy is in effect. In addition, suitable assurance must be given to the City Manager that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.

(c) Any person, including a person classified as a water customer of the City of Burkburnett, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

(d) Any employee of the City of Burkburnett, police officer, or other employee designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for which the date shall not be less than 3 days nor more than 5 days from the date the citation was issued. The alleged violator shall be served a copy

of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

**Section XI: Variances**

The City Manager, or his/her designee, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (a) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City of Burkburnett within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager, or his/her designee, and shall include the following:

- (a) ) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) ) Specific provision(s) of the Plan from which the petitioner is requesting relief.
- (d) Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
- (e) ) Description of the relief requested.
- (f) ) Period of time for which the variance is sought.
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- (h) Other pertinent information.

**Section XII: Severability**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan.

**SECTION 2.** That all ordinances that are in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION 4.** This ordinance shall be in full force and effect immediately upon passage and publication.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and the public notice of the time, place and purpose of said meeting was given as required by law.

**SECTION 6. Emergency**

The immediate need for implementation of this ordinance due to the current drought conditions that affects the public health and safety of the citizens of the City and its surrounding area creates an emergency therefore requiring the action in the ordinance to become effective immediately and suspends the posting requirements set forth in Article IV, Section 18 (c) of the City Charter.

**PASSED AND APPROVED** on this 19<sup>th</sup> day of May 2014.

\_\_\_\_\_  
Carl Law, Mayor

**ATTEST:**

\_\_\_\_\_  
Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley

**Date:** May 19, 2014

**Item:** Review Proposed Language: Ordinance Number 855: Water Vending Machine

### Background

Ordinance Number 855 pertains to the use of our water vending machine establishes a policy for customers for the new automated water dispensing station. It will be limited to county residents who have no other option for potable water than to purchase water from the water vending machine and haul water to their residence. Also there has been a purchase limit set at 10,000 gallons per month per customer. We have established a rate of \$6.15 per thousand gallons, with a deposit of \$75.00, and an administrative fee of \$25.00 a month. \$20.00 of the administration fee would assist in recuperating the cost of the unit and operation and maintenance expense. The remaining \$5.00 would be collected and paid to the County for their service in verifying an affidavit confirming identity, residency within Wichita County, and access to a potable water system. Staff believes this policy is necessary to establish control of the water vending machine and accountability of the water customers.

### Fiscal Impact

N/A

### Options

- Approve Ordinance Number 855 as presented
- Approve Ordinance 855 with revisions (Council)
- Do nothing at this time

### Staff Recommendation

Approve proposed language Ordinance Number 855 as presented

### Attachments

Ordinance Number 855 proposed language  
City of Wichita Falls Ordinance for Water Station

## **ORDINANCE NUMBER 855**

### **AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING CHAPTER 53, WATER VENDING MACHINE IN THE CODE OF ORDINANCES, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Wichita County is offering to provide monitoring mechanisms to allow water sales to residents of Wichita County who are not adjacent to water mains and are outside of service areas of other water providers, subject to the receipt of a \$25 per month administrative fee from each out-of-city customer to pay for the cost of the water vending machine; and

**WHEREAS**, persons who are not residents of the City do not pay taxes that provide for the continued availability of water and policing of its usage; therefore, the Board of Commissioners finds that it is appropriate to charge a higher fee to non-City residents and limit purchases by non-City residents to 10,000 gallons per month;

**WHEREAS**, the City Council finds that the Water Vending Machine is not a water service, but instead provides for periodic bulk water sales, may be terminated at any time, and is not a retail water service that is susceptible to rate or reliability regulation by any state agency, including but not limited to the Texas Commission on Environmental Quality pursuant to Texas Water Code § 13.250; and

**WHEREAS**, after receiving and reviewing the aforementioned costs, the Board of Commissioners finds that the fees established herein do not exceed the amount reasonably necessary to provide the services and administer and enforce the regulatory programs to which they are related, and further finds that any discrimination established against non-residents does not provide funds that exceed the taxpayer-funded amount of the described programs and is intended to provide for the additional cost of administering water usage outside the City limits.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the City of Burkburnett, Texas:

That Chapter 53 of the Code of Ordinances of the City of Burkburnett be amended to read as follows:

#### **SECTION 53.30-Water Vending Machine**

1. For residential customers obtaining water from the Water Vending Machine who are not residents of the City, the rate shall be \$6.15 per thousand gallons of water, plus a service fee of \$25.00 per month, and a \$75.00 deposit. Persons who are not residents of the City may not purchase more than 10,000 gallons of water from the Water Vending Machine per calendar month per residence.

2. Persons purchasing water from the Water Vending Machine may only use said water in accordance with drought management provisions applicable to water service from the City.

**SECTION 2.** This ordinance shall be become effective immediately after passage.

**SECTION 3.** It is hereby officially found and determined that the meeting at which this ordinance was considered was open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by the Open Meeting Act.

**PASSED AND APPROVED** on this 19<sup>th</sup> day of May, 2014.

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Carl Law, Mayor

ATTEST:

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Janelle Dolan  
City Clerk

ORDINANCE NO. 60-2013

**Ordinance Amending Section 106-126 Of The Code Of Ordinances Of The City Of Wichita Falls To Add Retail Water Rates For The Reilly Road Fill Station, Authorizing The City Manager To Execute An Interlocal Agreement With Wichita County To Provide For An Automated Dispensing Station And Remittance Of Administrative Fee To The County To Provide For The Cost Of Said Station; Providing For Codification, Declaring An Emergency, And Providing An Effective Date**

WHEREAS, some residents of the City are not adjacent to water mains, and lack sufficient liquid funds to provide water service to their residence, and the City desires to provide a means for those residents to obtain water for their homes; and

WHEREAS, Wichita County is offering to provide monitoring mechanisms to allow water sales to residents of Wichita County who are not adjacent to water mains and are outside of service areas of other water providers, subject to the receipt of a \$20 per month administrative fee from each out-of-city customer to pay for the cost of an automated dispensing station for the water; and

WHEREAS, persons who are not residents of the City do not pay taxes that provide for the continued availability of water and policing of its usage; therefore, the City Council finds that it is appropriate to charge a higher fee to non-City residents and limit purchases by non-City residents to 7,500 gallons per month;

WHEREAS, the City Council finds that the Reilly Road Water Fill Station is not a water service, but instead provides for periodic bulk water sales, may be terminated at any time, and is not a retail water service that is susceptible to rate or reliability regulation by any state agency, including but not limited to the Texas Commission on Environmental Quality pursuant to Texas Water Code § 13.250; and

WHEREAS, after receiving and reviewing the aforementioned costs, the City Council finds that the fees established herein do not exceed the amount reasonably necessary to provide the services and administer and enforce the regulatory programs to which they are related, and further finds that any discrimination established against non-residents does not provide funds that exceed the taxpayer-funded amount of the described programs and is intended to provide for the additional cost of administering water usage outside the City limits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

**1. Rates for Use of the Reilly Road Water Fill Station**

Section 106-126 of the Wichita Falls Code of Ordinances is amended to add

Subsection (j) thereto, which will read as follows:

- (j) **Reilly Road Water Fill Station:**
  - (1) Residential customers who are citizens of the City and are not adjacent to water mains are eligible to obtain water from the Reilly Road Water Fill Station during such periods as it is operational. The Department of Public Works may place additional rules on access to the Reilly Road Water Fill Station as it determines are appropriate to limit access to those City residents who are not adjacent to water mains. Rules governing access from persons residing outside the City limits may require additional certifications from Wichita County for the purpose of verification and policing of water obtained from the Reilly Road Water Fill Station.
  - (2) For residential customers obtaining water from the Reilly Road Water Fill Station who are City residents, the rate shall be \$4.40 per thousand gallons of water.
  - (3) For residential customers obtaining water from the Reilly Road Water Fill Station who are not residents of the City, the rate shall be \$8.80 per thousand gallons of water, plus a service fee of \$25.00 per month. Persons who are not residents of the City may not purchase more than 7,500 gallons of water from the Fill Station per month per residence.
  - (4) Persons purchasing water from the Reilly Road Water Fill Station may only use said water in accordance with drought management provisions applicable to water service from the City, including drought surcharges.

## **2. Interlocal Agreement**

The City Manager is authorized to execute an Interlocal Agreement, in a form to be approved by the City Attorney, with Wichita County to provide for purchases of water from the Reilly Road Water Fill Station by non-City-residents of Wichita County, the provision of an automated dispensing station by the County, and the remittance of part of the administrative fee to the County to provide for the cost of said station.

## **3. Codification**

The sections of this ordinance that specify they amend or add to the Code of Ordinances of the City of Wichita Falls are intended to be parts of said Code, and said sections of this ordinance may be renumbered or relettered to accomplish such intention.

#### **4. Emergency Declaration and Effective Date**

The City Council finds that the need for providing funds for the operation of the City and administering the rates established herein constitutes an urgent public need for the preservation of the peace, health and safety of property of the city, and declares that this is an emergency measure. As an emergency measure, it shall become effective immediately, with the rates established herein becoming immediately effective.

PASSED AND APPROVED this the 15<sup>th</sup> day of October, 2013.

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M A Y O R

ATTEST:

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City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Ordinance Number 855: Water Vending Machine

### Background

N/A

### Fiscal Impact

N/A

### Options

- Approve Ordinance Number 855
- Do nothing at this time

### Staff Recommendation

Approve Ordinance Number 855

### Attachments

Ordinance 855

## **ORDINANCE NUMBER 855**

### **AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING CHAPTER 53, WATER VENDING MACHINE IN THE CODE OF ORDINANCES, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Wichita County is offering to provide monitoring mechanisms to allow water sales to residents of Wichita County who are not adjacent to water mains and are outside of service areas of other water providers, subject to the receipt of a \$25 per month administrative fee from each out-of-city customer to pay for the cost of the water vending machine; and

**WHEREAS**, persons who are not residents of the City do not pay taxes that provide for the continued availability of water and policing of its usage; therefore, the Board of Commissioners finds that it is appropriate to charge a higher fee to non-City residents and limit purchases by non-City residents to 10,000 gallons per month;

**WHEREAS**, the City Council finds that the Water Vending Machine is not a water service, but instead provides for periodic bulk water sales, may be terminated at any time, and is not a retail water service that is susceptible to rate or reliability regulation by any state agency, including but not limited to the Texas Commission on Environmental Quality pursuant to Texas Water Code § 13.250; and

**WHEREAS**, after receiving and reviewing the aforementioned costs, the Board of Commissioners finds that the fees established herein do not exceed the amount reasonably necessary to provide the services and administer and enforce the regulatory programs to which they are related, and further finds that any discrimination established against non-residents does not provide funds that exceed the taxpayer-funded amount of the described programs and is intended to provide for the additional cost of administering water usage outside the City limits.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the City of Burkburnett, Texas:

That Chapter 53 of the Code of Ordinances of the City of Burkburnett be amended to read as follows:

#### **SECTION 53.30-Water Vending Machine**

1. For residential customers obtaining water from the Water Vending Machine who are not residents of the City, the rate shall be \$6.15 per thousand gallons of water, plus a service fee of \$25.00 per month, and a \$75.00 deposit. Persons who are not residents of the City may not purchase more than 10,000 gallons of water from the Water Vending Machine per calendar month per residence.

2. Persons purchasing water from the Water Vending Machine may only use said water in accordance with drought management provisions applicable to water service from the City.

**SECTION 2.** This ordinance shall be become effective immediately after passage.

**SECTION 3.** It is hereby officially found and determined that the meeting at which this ordinance was considered was open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by the Open Meeting Act.

**PASSED AND APPROVED** on this 19<sup>th</sup> day of May, 2014.

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Carl Law, Mayor

ATTEST:

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Janelle Dolan  
City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** InterLocal Agreement with Wichita County

### Background

This agreement would establish a partnership between the City of Burkburnett and Wichita County in regards to providing water to County residents who otherwise have no other availability to a potable water system, in other words have no other option than to haul their water. Within the agreement, the City would utilize a \$25.00 administration fee in which \$5.00 of that fee would be set aside and paid to the County for their service. That service specifically would be to review an affidavit submitted by potential water customers in order to verify their identification, residence in Wichita County, and access to a potable water supply.

### Fiscal Impact

\$5.00 of the proposed \$25.00 administrative fee would be paid to the County for their services involving the affidavit confirmation.

### Options

- Approve agreement
- Do nothing at this time

### Staff Recommendation

Staff recommends approval

### Attachments

Copy of InterLocal Agreement  
Copy of Affidavit

**Interlocal Agreement between the City of Burkburnett and  
Wichita County for Certification of Wichita County Residency for the Water Vending  
Machine and Remittance of Administrative Fees**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between Wichita County, Texas, hereinafter referred to as "County," and the City of Burkburnett, a Texas municipal corporation, hereinafter referred to as "City," both of Wichita County, State of Texas,

WHEREAS, this Agreement is made under the authority of Chapter 791 of the TEXAS GOVERNMENT CODE;

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, subject to County verification of status, the City will sell to non-City residents of Wichita County who are unable to obtain water service up to 10,000 gallons of potable water per calendar month from the City at the Water Vending Machine.

NOW, THEREFORE, the County and City agree as follows:

**1. Term**

This agreement will be for a term of **5 years** from its date of execution. Upon expiration of the initial 5-year period and each anniversary date thereafter, this agreement shall automatically be renewed for periods of one year apiece. After expiration of the initial 5-year term, this agreement may be terminated by either party, with or without cause, on at least 30 days' notice to the other party.

**2. Water Vending Machine**

The City will purchase a water vending machine to be used for the purpose of selling water to qualifying County residents. Subject to County verification procedures in Section 4 of this Agreement, the City agrees to sell to non-City residents of Wichita County up to 10,000 gallons of potable water per calendar month at the Water Vending Machine.

**3. Administrative Fee**

The City will charge each non-City resident who resides in Wichita County and purchases water at the Water Vending Machine an additional monthly administrative fee of **\$25**, which may be changed at any time. A portion of this monthly administrative fee will be intended to pay for the water vending machine. Of the said administrative fee, **\$5** will be paid to the County for the certification of Wichita County residency. The payments of utility bills will be applied in accordance with normal City procedures.

**4. Verification of Purchasers of Water who Reside outside of City Limits**

The County will verify the following information for potential purchasers of water under this Agreement from outside the City limits and certify the eligibility of the purchaser to receive water under this Agreement on a form provided by the City:

- Purchaser Name
- Purchaser Address
- Purchaser resides in Wichita County
- Purchaser does not reside in the City of Burkburnett
- Purchaser does not have access to a potable water supply at stated address
- The property on which Purchaser's address is located is not adjacent to a water main

### **5. City not limited in Rates for Water Vending Machine**

The City may increase and otherwise modify the rates for the water sold at the Water Vending Machine at the City's sole discretion. The bulk water sales described herein are not a retail water service that are susceptible to rate or reliability regulation by any state agency, including but not limited to the Texas Commission on Environmental Quality pursuant to Texas Water Code § 13.250.

### **6. No Third-Party Beneficiaries**

This agreement is not intended to have any third-party beneficiaries. Nothing herein shall be construed to give any rights or benefits to anyone other than the City and the County.

### **7. Laws Governing Agreement & Venue**

The validity of the agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas, and venue for any action concerning this agreement shall be in Wichita County, Texas.

### **8. Authorization & Counterparts**

By executing this Agreement, each party represents that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Agreement, and that this Agreement has been authorized by the governing body of the respective party. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**City of Burkburnett, Texas**

**Wichita County, Texas**

\_\_\_\_\_  
Carl Law, Mayor

\_\_\_\_\_  
Woodrow Gossom, Jr., County Judge

**Attest:**

**Attest:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
County Clerk

**Certification of Wichita Residency for Periodic Water Purchases from the Water Vending Machine by  
Persons who do not Reside in the City of Burkburnett**

Residents of Wichita County (Purchasers), who do not reside in the territorial limits of the City of Burkburnett (City), are requesting authorization to periodically purchase up to 10,000 gallons of potable water each month from the City at the Water Vending Machine, and to that end, the Purchaser and an Official of Wichita County certify to the following information:

Verification: Driver's License \_\_\_\_\_ Voter Registration \_\_\_\_\_ Current Utility Bill \_\_\_\_\_

Purchaser Name: \_\_\_\_\_

Purchaser Address: \_\_\_\_\_

Purchaser resides in Wichita County. \_\_\_\_\_

Purchaser does not reside in the City of Burkburnett. \_\_\_\_\_

Purchaser will use water solely for residential household purposes at stated address. Residential household purposes for purposes of this form do not include irrigation, livestock or any use outside of the Purchaser's residence.

Purchaser will not resell water.

Purchaser does not have access to a potable water supply at stated address.

Purchaser does not have access to a water supply corporation line adjacent to purchaser's property.

List date and name of water supply corporation: \_\_\_\_\_

Purchaser certifies and declares under penalty of perjury that the information listed above is true and accurate.

\_\_\_\_\_

Date

\_\_\_\_\_

Purchaser's signature

SWORN ATO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public in and for the State of Texas

I am the designated representative of the County Judge of Wichita County, and in this capacity, I certify and declare that I have verified the truth and accuracy of the information listed above to the best of my ability.

\_\_\_\_\_  
Commissioner, Pct. \_\_\_\_\_

**The City of Burkburnett will terminate all sales of water to any Purchaser who provides false or misleading information to the County or the City.** The City may terminate the provision of the water at the Water Vending Machine at any time, and place additional restrictions on availability, scheduling, and fees to be charged for the water, and Purchaser consents to any such restrictions of which Purchaser is shown or given notice at the time of any purchase.

The sales of water pursuant to this certification are subject to compliance with the City's separately issued rules and rates for said sales, which are subject to change at any time at the City's sole discretion.

The sales of water from the City pursuant to his certification are periodic, by schedule only, as is, not reliable, and are accompanied by no guarantees or warranties as to quality or fitness for any particular purpose. The Purchaser shall release, defend, indemnify, and hold harmless the City and the County for any liability, lawsuits, claims, or demands resulting from or related to Purchaser's execution of this certification or any person's use or acquisition of any water purchased pursuant to this certification. The Purchaser expressly agrees to defend release, indemnify, and hold harmless the City and the County in accordance with this clause regardless of whether any claimed injury or damage is caused in whole or in part by the acts or omissions, including negligence, of the City, County, or their officers, agents or employees or any condition of any property or any condition of any property owned or controlled by the City.

**Once verified by the County and fully executed, this original signed form must be provided by the Purchaser, personally, with photo identification and all required deposits, to the City of Burkburnett Utility Billing Department at 501 Sheppard Rd., Burkburnett, Texas.**



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Fred Dwyer Farm Lease

### Background

The City of Burkburnett entered into a purchase and sale agreement with Fred Dwyer for acreage adjacent to Ashton Rd. This agreement allows Mr. Dwyer to occupy and use the property for agricultural, farming purposes. We are reviewing the proposed Farm Lease which would need to be executed in order to meet the terms of the purchase and sale agreement. Our attorney has reviewed and approved the lease.

### Fiscal Impact

N/A

### Options

- Approve Farm Lease as presented
- Approve Farm Lease with revisions

### Staff Recommendation

- Staff recommends approving Farm Lease as presented

### Attachments

Copy of Purchase and Sale Agreement  
Copy of Proposed Farm Lease

**FARM LEASE**

THE STATE OF TEXAS     :  
  :  
COUNTY OF WICHITA     :

WHEREAS, on May 9, 2013, the City of Burkburnett and Fred E. Dwyer entered into a Purchase and Sale Agreement (Purchase Agreement) by which the City purchased two tracts of land from Mr. Dwyer;

WHEREAS, as part of the Purchase Agreement, the Parties agreed that Mr. Dwyer and/or his lineal descendants would be entitled, subject to termination of this entitlement by the City, to occupy and use the subject property for a period of ten years and for so long as thereafter as farmed by Mr. Dwyer and/or his lineal descendants; and

WHEREAS, the Parties acknowledge that Mr. Dwyer and/or his lineal descendants have been occupying and using the subject property for farming purposes since May 9, 2013.

This AGREEMENT OF LEASE made and entered into this \_\_\_\_ day of May, 2014, by and between the CITY OF BURKBURNETT, TEXAS, hereinafter called Lessor, and FRED E. DWYER, hereinafter called Lessee.

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease from Lessor, the premises situated in Wichita County, Texas, hereinafter called the Property, and more particularly described as follows:

See the Exhibit "A" attached hereto, incorporated herein, and hereby referred to for all purposes.

1. According to the provisions of the Purchase Agreement, the term of this Lease shall be for ten years beginning on May 9, 2013, and for so long thereafter as farmed by Lessee and/or his lineal descendants, unless sooner terminated as herein provided. Lessor may terminate this Lease and Lessee's and/or his lineal descendants' authority to occupy and use the property for agricultural purposes at any time with ninety (90) day written notice provided to Lessee and/or his lineal descendants. The Lessor will work with the Lessee and/or his lineal descendants so that the

termination date will not occur when Lessee and/or his lineal descendants have a crop planted on the Property and will allow the removal of such crop.

2. For and during the term of this Lease, Lessor agrees that Lessee and/or his lineal descendants shall not be charged any cost for the lease of this property under this Farm Lease.

3. This Farm Lease is not transferable under any circumstances and may only be used for the benefit of the Lessee and/or his lineal descendants.

4. Lessee agrees and covenants to cultivate the Property during the term hereof in an efficient and economic manner and to employ all modern methods of farming as are customarily practiced in the area, including, but not limited to plant, fertilize, water, mow and gather as Lessee and/or his lineal descendants in their discretion may determine, provided that absolutely no soil shall be removed from the Property.

5. Lessee agrees and covenants to keep and maintain in good repair all fences on the property for the term of this lease.

6. Lessor shall pay all ad valorem taxes, if any, attributable to the Leased Premises. Lessee shall pay all ad valorem taxes and insurance attributable to his personalty located in or upon the Leased Premises. Lessee shall furnish to Lessor certificates of insurance evidencing insurance. Lessee shall maintain with respect to the Leased Premises throughout the term of this Lease, a policy or policies of public liability insurance written in amounts of not less than \$500,000.00 with respect to injuries to any one person, and not less than \$1,000,000.00 with respect to injuries suffered in any one accident, and not less than \$50,000.00 with respect to damage to property.

7. Lessee may not make any alterations, additions or improvements to the property without the prior written consent of Lessor. Consent for nonstructural alterations, additions or improvements shall not be unreasonably withheld by Lessor. All alterations, additions,

or improvements made by Lessee shall become the property of Lessor at the termination of this Lease; if Lessor so elects, however, Lessee shall promptly remove all alterations, additions and improvements and any other property placed on the property by Lessee, and Lessee shall repair any damage caused by such removal.

8. Lessor or its authorized representative shall have the right, at any reasonable time, to enter on the premises for the purpose of drilling and maintaining water wells and making any repairs, alterations, or improvements, as it shall deem necessary or advisable.

9. This Lease shall not give rise to a partnership relationship between the parties. Neither party shall have the authority to bind the other without its written consent.

10. Lessee agrees and covenants to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from the conduct or management of Lessee's farming operation or his use of the above described premises or from any negligent act or omission by Lessee, his agents, servants, employees, contractors, guests, or invitees on or about the leased premises. In the event that any action or proceeding is brought against Lessor by reason of any of the above, Lessee further agrees and covenants to defend the action or proceeding by legal counsel acceptable to Lessor.

11. Lessee may not assign this Lease nor sublease any portion of the property leased hereunder without the prior written consent of Lessor.

12. If Lessor or Lessee fails to carry out any provision of this Lease, the other party shall have the right to terminate this Lease on thirty (30) days written notice to the offending party of his or its intention to do so. Nothing contained herein constitutes a waiver of the right of either party to damages occasioned by breach of this Lease.

13. This Lease shall constitute the entire understanding of the parties hereto

with respect to the subject matter hereof, and no amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

14. Neither Lessor nor Lessee shall be required to perform any term, condition or covenant of this Lease so long as performance is delayed or prevented by force majeure, which shall mean acts of God, drought, floods, material or labor restrictions by any governmental authority, and any other cause not reasonably within the control of either party, and which, by the exercise of due diligence, Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee hereto executed this Lease as of the date and year first above written.

**Commented [1]:** HABEN.FRM - HABENDUM CLAUSE FOR DEEDS

**LESSOR:**

CITY OF BURKBURNETT, TEXAS

By:

CARL LAW, Mayor

**LESSEE:**

FRED DWYER

THE STATE OF TEXAS :  
:  
COUNTY OF WICHITA :

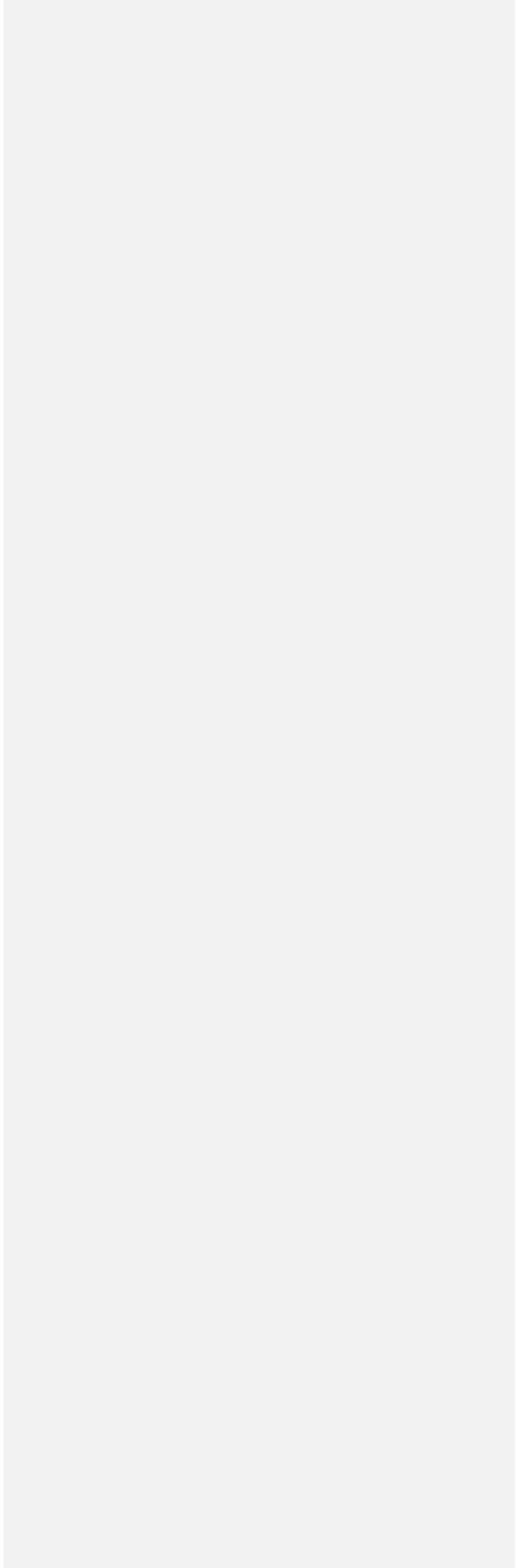
This instrument was acknowledged before me on the \_\_day of May, 2014 by CARL LAW, Mayor of the CITY OF BURKBURNETT, TEXAS, on behalf of such entity.

NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS :  
:  
COUNTY OF WICHITA :

This instrument was acknowledged before me on the \_\_ day of  
May, 2014, by FRED DWYER.

NOTARY PUBLIC, STATE OF TEXAS



**EXHIBIT "A"**

**TRACT 1:**

218.399 ACRE TRACT OF LAND OUT OF THE RED RIVER VALLEY LANDS SUBDIVISION, BLOCK 2 AND THE N. SALINAS SURVEY, ABSTRACT 261, AND WM. H. ANDERSON SURVEY, ABSTRACT 1, WICHITA COUNTY, TEXAS, BEING OUT OF THE SAME LAND CONVEYED TO WYNEMA BURNS CASWELL, TRUSTEE BY WARRANTY DEED RECORDED IN VOLUME 1522, PAGE 858, WICHITA COUNTY DEED RECORDS, AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at an iron rod set at a fence corner for the Southwest corner of the John Deck Survey, A-52, being in the North line of the N. Salinas Survey, A-261 for an ell corner and PLACE OF BEGINNING of the herein described tract;

THENCE generally with fence, N 89° 59' 33" E a distance of 2562.48 feet to an iron rod set at a fence corner for the Northeast corner of this tract;

THENCE generally with fence, S 00° 00' 08" W a distance of 3524.47 feet to an iron rod set for the Southeast corner of this tract;

THENCE N 89° 59' 26" W a distance of 362.70 feet to an iron rod set for an ell corner of this tract;

THENCE S 00° 13' 17" W a distance of 660.09 feet to an iron rod set in a curve of the East right-of-way line of U.S. Highway No. 240 for the most Southerly corner of this tract, bearing of the tangent to said rod bears N 11° 24' 13" W;

THENCE with the East and North right-of-way line of U. S. Highway No. 240 as follows:

in a Northwesterly direction along a curve to the left, having a radius of 2925.01 feet and a central angle of 38° 07' 07" for an arc distance of 1946.00 feet to an iron rod set at a point of tangency;

N 49° 31' 20" W a distance of 934.89 feet to an iron rod set for an ell corner of this tract, said rod being the Southeast corner of a certain 5.00 acre tract of land conveyed to Cashion Baptist Church of Burkburnett, Texas, Inc., by deed recorded in Volume 1289, Page 896, Wichita County Deed Records;

THENCE leaving the North right-of-way line of U. S. Highway No. 240, N 40° 30' 24" E along the East line of said 5.00 acre tract, a distance of 597.01 feet to an iron rod set at the Northeast corner of said 5.00 acre tract for an ell corner of this tract;

THENCE N 49° 37' 25" W a distance of 365.20 feet to an iron rod set at the Northwest corner of said 5.00 acre tract for an ell corner of this tract;

THENCE S 40° 30' 24" W a distance of 596.37 feet to an iron rod set in the North right-of-way line of U. S. Highway No. 240 for the Southwest corner of said 5.00 acre tract and for an ell corner of this tract;

THENCE with the North right-of-way line of U. S. Highway No. 240 as follows:

N 49° 31' 20" W a distance of 311.63 feet to an iron rod set in the East line of Block 2, Red River Valley Lands Subdivision for an angle corner of this tract;

N 00° 05' 52" W a distance of 23.70 feet to an iron rod set in the East line of Block 2, Red River Valley Lands Subdivision for an angle corner of this tract;

N 49° 31' 20" W a distance of 733.91 feet to an iron rod set for an angle corner of this tract;

N 63° 33' 20" W a distance of 61.86 feet to an iron rod set for an angle corner of this tract;

N 49° 31' 20" W a distance of 1241.00 feet to an iron rod set for the Southwest corner of this tract from which a 4 inch wood fence corner bears N 00° 00' 25" W a distance of 1.93 feet;

THENCE leaving said North right-of-way line of U. S. Highway No. 240, generally with a fence line, N 00° 00' 25" W a distance of 1224.96 feet to an iron rod set in an East-West fence line for the Northwest corner of this tract;

THENCE with fence, S 89° 36' 42" E a distance of 1559.41 feet to an iron rod set in the West line of the John Deck Survey, A-52, for the most Northerly Northeast corner of this tract;

THENCE along a fence line, the West line of John Deck Survey, S 00° 14' 23" W a distance of 1056.36 feet to the PLACE OF BEGINNING and containing 218.399 acres of land;

**SAVE AND EXCEPT:**

40.00 ACRES OUT OF A TRACT OF LAND CONVEYED TO 2007 LANDRUM-TX, LTD., BY DEED RECORDED IN VOLUME 3448, PAGE 102, OFFICIAL PUBLIC RECORDS OF WICHITA COUNTY, OUT OF THE N. SALINAS SURVEY, A-261, THE WM. H. ANDERSON SURVEY, A-1, AND THE HENRY HASTIE SURVEY, A-99, WICHITA COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron rod found at the Southeast corner of the said Salinas Survey, the Northeast corner of the said Hastie Survey, in the West line of the said Anderson Survey and at an ell corner of a tract of land conveyed to Curtis H. Willis by deed recorded in Volume 3176, Page 183, Official Public Records of Wichita County, for an ell corner of this tract;

THENCE S 00° 13' 17" W, with the East line of said Hastie Survey, the West line

of said Anderson Survey and the West line of said Willis tract, a distance of 660.09 feet to an iron rod found in a curve to the left having a radius of 2925.01 feet, said rod being at the intersection of the East line of said Hastie Survey and the North line of U. S. Highway 240, for the South line of this tract;

THENCE Northwesterly with the North line of U. S. Highway 240 and said curve to the left an arc distance of 1946.00 feet (Chord = N 30° 27' 47" W a distance of 1910.31 feet) to an iron rod found at the end of said curve;

THENCE N 49° 31' 20" W, continuing with the North line of U. S. Highway 240, a distance of 934.89 feet to an iron rod found at the South corner of a tract of land conveyed to Cashion Baptist Church of Burkburnett, Texas, Inc., by deed recorded in Volume 1289, Page 896, Wichita County Deed Records, for the West corner of this tract;

THENCE N 40° 30' 24" E, with the Southeast line of said Church tract, at 597.00 feet pass an iron rod found at the East corner of said Church tract, continuing on the same course a total distance of 641.20 feet to an iron rod set for the North corner of this tract;

THENCE S 49° 31' 20" E a distance of 2140.93 feet to an iron rod set in the West line of said Willis tract, for the Northeast corner of this tract;

THENCE S 00° 00' 08" W, with the West line of said Willis tract, a distance of 691.20 feet to an iron rod found at an ell corner of said Willis tract, for an ell corner of this tract;

THENCE N 89° 59' 26" W, with a North line of said Willis tract, a distance of 362.79 feet to the PLACE OF BEGINNING and containing 40.00 acres of land.

**TRACT 2:**

290.82 acres of land out of the John Deck Survey, Abstract 52, the N.Salinas Survey, Abstract 261, and the W. H. Anderson Survey, Abstract 1, Wichita County, Texas, described by metes and bounds as follows:

BEGINNING at a fence corner in the West line of the John Deck Survey, A-52, and in the East line of Block 5, Red River Valley Land Subdivision, said fence corner is called to be 672.6 feet South of the Northeast corner of said Block 5, said fence corner being the Southwest corner of a 3.0 acre tract conveyed to Christopher Johns and Lisa Koschak by deed recorded in Volume 2908, Page 759, Official Public Records of Wichita County, for the most Westerly Northwest corner of this tract;

THENCE S 89° 51' 12" E with the fenced South line of said 3.0 acre tract, a distance of 361.48 feet to a fence corner for the Southeast corner of said 3.0 acres, for an ell corner of this tract;

THENCE N 00° 03' 08" E with the fenced East line of said 3.0 acre tract, at 343.2 feet pass a fence corner on the South line of Ashton Road, and continuing on same course, in all a distance of 361.40 feet to an iron rod found in the center of Ashton Road, for the most Northerly Northwest corner of this tract;

THENCE S 89° 50' 00" E with the center of Ashton Road, a distance of 2461.19 feet to a nail found at the Northwest corner of a tract conveyed to Charles McClure by deed recorded in Volume 532, Page 511, Wichita County Deed Records, for the Northeast corner of this tract;

THENCE S 00° 10' 23" E with the West line of said McClure tract, at 20.9 feet pass a fence corner on the South line of Ashton Road, and continuing on same course with fence, in all a distance of 4511.26 feet to a 6" fence post, for the Southeast corner of this tract;

THENCE S 89° 46' 25" W, at 57.7 feet pass a fence corner and continuing on same course with fence, in all a distance of 2839.29 feet to a fence corner, for an ell corner in a tract conveyed to Wynema Caswell, Trustee of the Wynema Burns Caswell Trust, for the Southwest corner of this tract;

THENCE N 00° 01' 12" E with fence, at 1056.38 feet pass the Southeast corner of Block 3, Red River Valley Lands Subdivision, and continuing on same course with fence and the East line of said Blocks 3 and 5, Red River Valley Lands Subdivision, in all a distance of 4169.14 feet to the PLACE OF BEGINNING and containing 290.82 acres of land.



## City Commission Agenda Memo

**From:** Ed Stahr, Chief of Police  
**Date:** 05-19-2014  
**Item:** Animal Adoption Program

### Background

Chief Stahr is seeking alternate methods for the disposal of animals other than euthanasia. Request the Board of Commissioners authorize Chief Stahr to enter into any necessary agreements on behalf of the City regarding the adoption of animals in police department custody and giving Chief Stahr, as the Chief of Police, the authority to implement and operate an animal adoption program for such animals.

### Fiscal Impact

No additional cost to City

### Options

Approve Request

Deny Request

### Staff Recommendation

Approve Request

### Attachments

None



## City Commission Agenda Memo

**From:** Deana Sheriff, Executive Director, Burkburnett Development Corporation

**Date:** May 19, 2014

**Item:** Resolution Number 559. A resolution ordering payment of up to \$55,000 for the purchase of a new electronic Community Center sign.

### Background

Replacement of existing signage on Community Center with electronic LED sign. Purpose is to enable communication of community events, emergency notices, and notices of public meetings. The electronic sign shall be placed on the existing derrick. The derrick shall remain in place as part of the character and history of Burkburnett.

### Fiscal Impact

Up to \$55,000 of 4B funds from Burkburnett Development Corporation shall be expended for the purchase and installation of the sign. The funds shall come from BDC reserve funds.

### Options

- Approve Resolution Number 559
- Not approve Resolution Number 559

### Staff Recommendation

Approve Resolution Number 559

### Attachments

Resolution Number 559  
Community Center Sign Bid

**RESOLUTION NUMBER 559**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND IMAGE ADVERTISING FOR THE PURCHASE AND INSTALLATION OF AN ELECTRONIC MESSAGE CENTER LOCATED AT THE BURKBURNETT COMMUNITY CENTER AND AGREEING TO FUND UP TO FIFTY-FIVE THOUSAND DOLLARS.**

**WHEREAS**, the Burkburnett Development Corporation (the "BDC") is a Type B economic development corporation created by the City of Burkburnett, Texas (the "City"), which has a population of less than 20,000; and

**WHEREAS**, the BDC has proposed entering into an agreement with Image Advertising to fund up to fifty-five thousand dollars for the purchase and installation of a double-sided, 16 mm color, electronic message center on the existing derrick structure at the Burkburnett Community Center; and

**WHEREAS**, this resolution has been given two readings before the Board of Commissioners: one on April 21, 2014 and another on the date this resolution was approved; and

**WHEREAS**, this resolution was approved in a meeting which was open to the public and preceded by proper notice as required by Chapter 551 of the Texas Government Code;

**NOW, THEREFORE, BE IT RESOLVED** that the BDC is hereby authorized to enter into the *agreement* with Image Advertising, whereas the Burkburnett Development Corporation would agree to fund up to fifty-five thousand dollars for the purchase and installation of a double-sided, 16 mm color, electronic message center on the existing derrick structure at the Burkburnett Community Center;

**FURTHER RESOLVED** that the officers of the City are hereby authorized and directed to take such action as may be reasonably necessary to carry this resolution into effect.

First reading on April 21, 2014

**APPROVED** on this \_\_\_\_\_, 2014, Second and Final Reading.

---

Carl Law, Mayor

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Janelle Dolan, City Clerk

# Proposal

Page No.

of

Pages

**IMAGE ADVERTISING**  
**NEON AND ELECTRIC SIGNS-SALES AND SERVICE**  
 P.O BOX 2225  
 WICHITA FALLS, TEXAS 76307  
 (940) 766-4307 Fax (940) 766-0014

PROPOSAL SUBMITTED TO <i>Bulk Community Center</i>		PHONE	DATE <i>Jan 27, 2014</i>
STREET		JOB NAME <i>Electronic Message Center</i>	
CITY, STATE and ZIP CODE		JOB LOCATION <i>Save@ Kramer</i>	
ARCHITECT	DATE OF PLANS	JOB PHONE	

We hereby submit specifications and estimates for:

*Furnish & install a double-face, Twin-Pak, 16mm color Electronic Message Center on the existing service structure. Customer is responsible for providing primary electrical service to the sign. See attached specs.*

*16mm color 4'5" x 7'3" \$44,007 installed*

**We Propose** hereby to furnish material and labor — complete in accordance with above specifications, for the sum of: \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

Payment to be made as follows:

*A 50% deposit is due at the time an order is placed, with the balance due upon completion*

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature

*Tommy [Signature]*

Note: This proposal may be withdrawn by us if not accepted within *90* days.

**Acceptance of Proposal** — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_

Signature \_\_\_\_\_

Time-O-Matic, Inc.  
 1015 Maple Street, Danville, IL 61832  
 Ph: (217) 442-0611 Fx (217) 442-1020



Quote Number: 1400964 rev 4.00 - Quote Date: 01/27/2014

Sign Company 46500	Shipping Destination	Job Site	REVISION
Tommy Richardson, President Image Advertising P.O. Box 2225 Wichita Falls, TX 76307 Phone: 940-766-4307	IMAGE ADVERTISING 812 WACO STREET WICHITA FALLS TX 76301	Name: Burkburnett Community Ctr. Address: City: State: Zip:	Original End User

Sign ID 688084 - (W16J-S) 16mm Slim Front Ventilation Highbrightness Color LED Message Center

Sign Specifications	
Pitch/Char:	WatchFire 16mm / 4.00in
Cabinet Style:	Double Face Twinpak (Slim)
Cabinet Depth:	6.00 inches
Apx. Weight:	727 Lbs.
Overall Size:	4ft 5in H x 7ft 3in L x 5in D
LED Color:	Color
Viewing Area:	4ft H x 7ft L
Matrix Size:	72 x 126
8 lines / 25 Characters at a 4" type.	
Character Style	

Standard Features
Color:.....LED RGB
Color Capability:.. 144 Quadrillion
Viewing Angles:.. 140 Horiz/70 Vert
Video:.....plays prerecorded clips up to 30FPS
Imports Windows Video (AVI)
Animated Text & graphics
Includes:.....Ignite Graphics Software
Brightness:.....Daytime 10000 NITs Maximum
Nighttime 750 NITs Maximum
Energy-Conscious LED: Use optional Sign Brightness Adjustment to run sign at less than 10000 NITs.

Options	
Communications	RWF High Speed Long Range V
Group Link	Not Ordered
Temperature Sensor	w/16 ft Cable
Software Training	Web Based Software Training
Personal Computer	Standard Ignite Software Only
Fiber Optic Cable	Not Ordered / Not Required
Technician On-Site	Not Ordered
Cabinet Separation	Standard Up To 15 Feet
Power Requirements	Standard As Quoted
Sign Mounting Kit	Not Ordered / Not Required
Spare parts kit	Not Ordered
Special Options	Not Ordered
Custom Artwork	Not Ordered

Electrical Service & Energy Consumption
120.00 VOLT 9.00 amps per face / 18.00 amps total Single Phase Service Refer to the installation manual for details on wiring. Based on 18.00 hours of operation a day, plus or minus 10% depending on how the sign is programmed.
11.2 KWHrs a day x \$0.07 = 0.78/Day
<b>Leadtime: 4-6 weeks (after this document is signed &amp; returned and receipt of down payment). Standard 5 Year Watchfire warranty applies.</b>

System Price For One DF 16mm Slim Front Ventilation Highbrightness Color LED Message Center



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** May 19, 2014  
**Item:** Resolution 563; Denying Atmos Energy Rate Increase

### Background

The Atmos Cities Steering Committee submitted a memorandum and model staff report to the 164 cities served by the Atmos Energy Mid- Tex Division and provided a proposed resolution denying the rate increase requested by Atmos Energy. Attachments are included for your review. I will do my best to summarize in meeting.

### Fiscal Impact

Unknown until process is final

### Options

- Approve Resolution 563
- Do nothing at this time

### Staff Recommendation

Recommends approval of Resolution 563

### Attachments

Model Staff Report provided by Lloyd Gosselink Attorneys at Law, Atmos Cities Steering Committee  
Resolution 563 provided by Lloyd Gosselink Attorneys at Law, Atmos Cities Steering Committee

## MODEL STAFF REPORT

The City, along with approximately 164 other cities served by Atmos Energy Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC”). On or about February 28, 2014, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism (“RRM”) tariff renewed by the City in 2013 as a continuation and refinement of the previous RRM rate review process. This is the second annual RRM filing under the renewed RRM tariff.

The Atmos Mid-Tex RRM filing sought a \$45.7 million rate increase system-wide based on an alleged test-year cost of service revenue deficiency of \$49 million. Of the total amount requested, almost \$37 million is attributable to the affected cities. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates. Although a good faith attempt was made by ACSC to reach a compromise with Atmos Mid-Tex, an agreement was not reached. In the absence of an agreement, the ACSC Executive Committee and ACSC’s legal counsel have recommended that ACSC members adopt the attached Resolution denying the rate increase request.

The RRM tariff was adopted by the City as an alternative to the Gas Reliability Infrastructure Program (“GRIP”), the statutory provision that allows Atmos to bypass the City’s rate regulatory authority to increase its rates annually to recover capital investments. In past years, cities have been able to reach a compromise with Atmos to reduce the rate impact from the requested RRM increases, and these compromises have also been lower than the rates that Atmos would have been entitled to under the GRIP filing. In this case, the Company would have been entitled to an increase from GRIP of no more than \$31.5 million. The magnitude of the requested increase under the 2014 RRM filing, and the wide differences between it and the ACSC consultants’ recommendations made a compromise much more difficult and ultimately impossible. The Company demanded more than it would be entitled to if it had filed a GRIP case. For this reason, the ACSC Executive Committee and ACSC legal counsel recommend that all ACSC Cities adopt the Resolution denying the requested rate change.

### **RRM Background:**

The RRM tariff was originally approved by ACSC Cities as part of the settlement agreement to resolve the Atmos Mid-Tex 2007 system-wide rate filing at the Railroad Commission. In early 2013, the City adopted a renewed RRM tariff for an additional five years. This is the second RRM filing under the renewed tariff. This filing was made by agreement less than one year after the first filing in order for the RRM rate-setting process to hereafter use a calendar year as the test period.

The RRM tariff and the process implementing that tariff were created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the legislatively-authorized GRIP surcharge process. ACSC has opposed GRIP because it constitutes piecemeal ratemaking, does not allow any review of the reasonableness of Atmos’ expenditures, and does not allow participation by cities or recovery of cities’ rate case expenses. In contrast, the RRM process has allowed for a more comprehensive rate review and annual adjustment as a substitute for GRIP filings.

ACSC's consultants have calculated that had Atmos filed under the GRIP provisions, it would have received additional revenues from ratepayers of approximately \$31.5 million.

**Purpose of the Resolution:**

Rates cannot change without the adoption of rate ordinances by cities. No related matter is pending at the Railroad Commission. The purpose of the Resolution is to deny the rate increase requested by Atmos. Under the RRM tariff, Atmos may appeal the rate decision of the cities to the Railroad Commission; such appeal must be filed within thirty (30) days of the City action.

The RRM tariff also allows Atmos to implement its requested rates effective June 1 while any appeal at the Commission is pending, subject to refunds based upon the outcome of the appeal. This would represent a monthly increase of approximately \$2.02 for the average residential customer, subject to any refund if the Commission reduces the rates implemented by Atmos. The actual impact will be slightly less than \$2.02 for most residential customers because the Company has indicated it will not appeal and thus concedes several of the issues raised by Cities. The Resolution also authorizes the City to participate as a party to the appeal in conjunction with the ACSC, and requires the Company to reimburse the City for its rate case expenses associated with the City's review of the RRM filing, and with the appeal of the City's denial of the rate increase.

**Rate Impact of Appeal by Atmos Effective June 1:**

The RRM tariff constrains the annual increase in the residential customer charge to no more than \$0.50. The current \$17.70 customer charge will be increased to \$18.22 per month with the addition of an energy conservation program surcharge of \$0.02. The current \$17.70 customer charge for unincorporated area customers will become \$20.32 per month because all of the increase associated with a GRIP filing, which is applicable to all customers not covered by a RRM tariff, is placed on the customer charge. However, the commodity charge for unincorporated residential service will be less than one-half of the commodity charge for residents of incorporated areas—\$0.04172 per Ccf vs. \$0.08998 per Ccf.

A comparison of rates and rate impact of what Atmos initially proposed in its RRM filing is reflected in the following chart:

Customer Class	Current Bill	New Bill	Difference	New Customer Charge	New Commodity Charge	Base Rate Increase
Residential	48.09	50.11	2.02	\$ 18.22	\$0.08998 Ccf	9.41%
Commercial	254.85	260.91	6.06	\$ 38.85	\$0.07678 Ccf	9.59%
Industrial	4,680.30	4,837.10	156.80	\$675.00	declining block	9.70%
Transportation	2,836.84	2,993.64	156.80	\$675.00	declining block	9.70%

However, Atmos has indicated that it will not appeal all issues raised by Cities and thus the impact should be slightly less than what is reflected in the above chart. A precise impact statement cannot be presented until after the Company's appeal is filed.

**Reasons Justifying Approval of the Resolution:**

Consultants working on behalf of ACSC Cities have investigated the Company's requested rate increase. While the evidence does not support the \$45.7 million increase requested by the Company, ACSC's consultants agree that the Company can justify an increase in revenues of a much lesser amount—namely, an increase of only \$19 million. The Executive Committee authorized a settlement value considerably above the consultants' recommendation but it was insufficient to meet the Company's expectation. The Company and ACSC Cities were too far apart in their positions to reach a compromise, and rather than granting a partial increase that the Company will not accept, the option remaining is to deny the rate increase request in its entirety, and participate in the Company's appeal of this decision at the Railroad Commission.

**Explanation of "Be It Resolved" Paragraphs:**

1. This paragraph approves all findings in the Resolution.
2. This section denies the requested rate increase, finds the proposed rates to be unreasonable and not in the public interest, and finds the existing rates to be just and reasonable.
3. This section requires the Company to reimburse ACSC Cities for reasonable ratemaking costs associated with reviewing and processing the RRM application.
4. This section authorizes participation by the City in conjunction with ACSC in any appeal filed by the Company at the Railroad Commission, and authorizes ACSC and its counsel to act on behalf of the City. This section also requires the Company to reimburse ACSC Cities for reasonable ratemaking costs associated with any appeal filed by the Company to the City's resolution.
5. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
6. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Resolution. This section further directs that the remaining provisions of the Resolution are to be interpreted as if the offending section or clause never existed.
7. This paragraph directs that a copy of the signed Resolution be sent to a representative of the Company and legal counsel for ACSC.

**RESOLUTION NUMBER 563**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, DENYING THE RATE INCREASE REQUESTED BY ATMOS ENERGY CORP., MID-TEX DIVISION UNDER THE COMPANY'S 2014 ANNUAL RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES PERTAINING TO REVIEW OF THE RRM; AUTHORIZING THE CITY'S PARTICIPATION WITH ATMOS CITIES STEERING COMMITTEE IN ANY APPEAL FILED AT THE RAILROAD COMMISSION OF TEXAS BY THE COMPANY; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES IN ANY SUCH APPEAL TO THE RAILROAD COMMISSION; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.**

WHEREAS, the City of Burkburnett, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of approximately 164 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review of and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three-year experiment by ACSC Cities as a substitute to the current Gas Reliability Infrastructure Program ("GRIP") process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM tariff; and

WHEREAS, in 2013, ACSC and the Company negotiated a renewal of the RRM tariff process for an additional five years; and

WHEREAS, the City passed an ordinance renewing the RRM tariff process for the City for an additional five years; and

WHEREAS, the RRM renewal tariff contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

WHEREAS, on or about February 28, 2014, the Company filed with the City its second annual RRM filing under the renewed RRM tariff, requesting to increase natural gas base rates by \$45.7 million; and

WHEREAS, ACSC coordinated its review of Atmos Mid-Tex's RRM filing through its Executive Committee, assisted by ACSC attorneys and consultants, to investigate issues identified by ACSC in the Company's RRM filing; and

WHEREAS, ACSC attorneys and consultants have concluded that the Company is unable to justify a rate increase of the magnitude requested in the RRM filing; and

WHEREAS, ACSC's consultants determined the Company is only entitled to a \$19 million increase, approximately 42% of the Company's request under the 2014 RRM filing; and

WHEREAS, the Company would only be entitled to approximately \$31 million if it had a GRIP case; and

WHEREAS, the Company's levels of operating and maintenance expense have dramatically risen without sufficient justification; and

WHEREAS, the Company has awarded its executives and upper management increasing and unreasonable levels of incentives and bonuses, expenses which should be borne by shareholders who received a 23% total return on investment in 2013; and

WHEREAS, the Company requested a drastically high level of medical expense that is unreasonable and speculatively based upon estimates; and

WHEREAS, ACSC and the Company were unable to reach a compromise on the amount of additional revenues that the Company should recover under the 2014 RRM filing; and

WHEREAS, the ACSC Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities deny the requested rate increase; and

WHEREAS, the Company's current rates are determined to be just, reasonable, and in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:

Section 1. That the findings set forth in this Resolution are hereby in all things approved.

Section 2. That the Board of Commissioners finds that Atmos Mid-Tex was unable to justify the appropriateness or the need for the increased revenues requested in the 2014 RRM filing, and that existing rates for natural gas service provided by Atmos Mid-Tex are just and reasonable.

Section 3. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC Cities in processing the Company's RRM application.

Section 4. That in the event the Company files an appeal of this denial of rate increase to the Railroad Commission of Texas, the City is hereby authorized to intervene in such appeal, and shall participate in such appeal in conjunction with the ACSC membership. Further, in such

event Atmos Mid-Tex shall reimburse the reasonable expenses of the ACSC Cities in participating in the appeal of this and other ACSC City rate actions resulting from the 2014 RRM filing.

Section 5. That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 7. That a copy of this Resolution shall be sent to Atmos Mid-Tex, care of Chris Felan, Manager of Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

RESOLVED this 19th day of May, 2014.

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Carl Law, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk